



6-2-2020

A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace

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Cover Page Footnote

Head of the Access to Justice Design Lab at the Universidad de los Andes, a joint venture between the Law, Engineer and Design Schools to create a new generation of judicial solutions to enhance access to justice in Colombia. Also, Head of the Office for Data Analysis & Strategic Studies at the City of Bogota's Department of Security and Justice. The author would like to express his sincere gratitude to Professor Robert W. Gordon, Professor Lawrence M. Friedman, Diego Gil McCawley, Professor Zachary Kaufman, Nicolás Torres, Juan David Camacho, and Sophia Cai. The interviews conducted in Colombia as part of this research were possible thanks to the generous support of the Stanford Center for Latin American Studies Field Research Grant. The qualitative research in this Article would not have been possible without the generosity of all those who gracefully agreed to be interviewed. The quantitative research would not have been possible without the extraordinary help of Harvey Suárez, the technical secretary of the Selection Commission, who provided the author with the raw data of the applications submitted in the process for selecting the judges of the Special Jurisdiction for Peace. Finally, the author would like to recognize the wonderful advice and priceless assistance of Lara Thiele and Brad A. Rocheville of the Notre Dame Journal of International & Comparative Law and their team of editors.

**A SECOND CHANCE ON EARTH:
UNDERSTANDING THE SELECTION PROCESS OF
THE JUDGES OF THE COLOMBIAN
SPECIAL JURISDICTION FOR PEACE**

SANTIAGO PARDO RODRÍGUEZ*

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*Give us the proudest prisoner of the Goths,
That we may hew his limbs and on a pile
[To the shade of our brothers] sacrifice his flesh
Before this early prison of their bones,
That so the shadows be not unappeased,
Nor we disturbed with prodigies on earth.*

—William Shakespeare¹

INTRODUCTION

The only witness to the bloodshed was a mutilated image of Christ laid on the floor among bodies of men, women and children.² On May 2, 2002, a rudimentary mortar used by the Guerillas landed on a church where hundreds of civilians sought shelter during an armed encounter between rebel fighters and paramilitary units.³ The massacre occurred in Bojayá, a small and extremely

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¹ TITUS ANDRONICUS 1.1.99–104 (Jonathan Bate ed. 2018).

² Armando Neira, *¿Cómo Fue la Masacre de Bojayá?*, SEMANA (May 13, 2002, 12:00 AM), <https://www.semana.com/nacion/articulo/como-fue-la-tragedia-de-bojaya/50635-3>.

³ Martin Hodgson, *Colombians find massacre evidence*, The Guardian (February 6, 2019, 2:35 PM), <https://bit.ly/2Gcqkoj>.

poor Afro-Colombian village located on the Colombian Pacific coast.⁴ The town, historically neglected by the Government, was at the time a strategic corridor for illegal smuggling of drugs and arms.⁵ The explosion killed 79 people and left almost 100 seriously injured. Unfortunately, more than half of the casualties were children.⁶

On December 6, 2015, a delegation of the Colombian Revolutionary Armed Forces (FARC) led by the guerrilla commander Pastor Alape visited what remained of the church as part of a public forgiveness ceremony.⁷ Mr. Alape, on the steps of the building, addressed a group of 700 survivors of the Bojayá Massacre.⁸ In the speech, while accepting partial responsibility for what occurred, he recognized that his speech was not enough to compensate the victims for the tremendous damage caused by the actions of the FARC.⁹ For its part, the representatives of the victims of Bojayá acknowledged that the guerrilla group was not the only one responsible for the massacre. In a reply to Mr. Alape's speech, the chairman of the Victim's Committee of Bojayá announced that the events were the result of a fatal combination of the State's historical abandonment of the region, the paramilitary's decision to use the civilian population as human shields, and the guerrilla's outrageous use of an improvised mortar in order to repel the attack.¹⁰

The Bojayá Massacre is one of the most emblematic tragedies of the Colombian civil war.¹¹ Its cruelty and the widespread responsibility among all the parties in the conflict, evokes a difficult question: where do you draw the line between peace and justice? As the ceremony described above shows, war produces profound wounds in society and claims of justice are complicated and numerous.

⁴ The town of Bojayá is located in the State of Chocó. According to the Colombian National Bureau of Planification, the State's poverty index of 68.3% ranks first in the country. DEPARTAMENTO NACIONAL DE PLANEACIÓN, POBREZA MONETARIA Y POBREZA MULTIDIMENSIONAL: ANÁLISIS 2010–2017, at 12 (2018), <https://colaboracion.dnp.gov.co/CDT/Desarrollo%20Social/Pobreza%20Monetaria%20y%20Multidimensional%20en%20Colombia%202010-2017.pdf>.

⁵ Antony Barnett, *Price of Cocaine Paid with Blood*, GUARDIAN (Feb. 13, 2005), <https://www.theguardian.com/world/2005/feb/13/drugsandalcohol.colombia>.

⁶ Kirk Semple, *With Colombia's Peace Deal in Doubt, a Battered Town Fears a Return to War*, N.Y. TIMES (Oct. 10, 2016), <https://www.nytimes.com/2016/10/11/world/americas/colombia-peace-deal.html>.

⁷ Armando Neira, *FARC Piden Perdón en Bojayá por la Massacre del 2002*, SEMANA (Dec. 6, 2015), <https://www.semana.com/nacion/articulo/farc-piden-perdon-en-bojaya-por-la-masacre-de-2002/452601-3>.

⁸ Francisco de Roux, *Actos de Reconciliación*, EL TIEMPO (Dec. 9, 2015), <https://www.eltiempo.com/archivo/documento/CMS-16453378>.

⁹ Mr. Alape said, "we [the FARC] know that these words are not enough to compensate what is beyond compensation. No action we can undertake will return to the victims the loved ones they lost and will not blur the pain and suffering produced." United Nations [U.N.], *Pastor Alape's Speech During the Act of Recognition of Responsibility of the FARC at Bojayá*, YOUTUBE (Mar. 12, 2018), <https://www.youtube.com/watch?v=ljQF7mz3LuI> (translated from Spanish by the author).

¹⁰ Caracol News, *Pastor Alape Recognizes Responsibility to Victims of the Bojayá Massacre*, YOUTUBE (Mar. 12, 2018), <https://www.youtube.com/watch?v=109Ys0RWbh0> (translated from Spanish by the author).

¹¹ In its report about the Bojayá Massacre, the Center for National Memory concludes that the events around the massacre "mark the history of Colombia and its characteristics have made it an emblematic case of the dynamics of violence around the armed conflict." GONZALO SÁNCHEZ ET AL., BOJAYÁ: LA GUERRA SIN LÍMITES 25 (2010), <http://www.centrodememoriahistorica.gov.co/informes/publicaciones-por-ano/2010/bojaya-la-guerra-sin-limites-2> (translated from Spanish by the author).

Transitional Justice tries to answer this question through overlapping, diverging and, in certain occasions, contradictory solutions.¹² As Shakespeare teaches in *Titus Andronicus*, private vengeance will always become unmanageable if law does not contain it, because violence never evens the odds among parties in conflict.¹³ In this sense, it is necessary to accept that Transitional Justice is a broad term that includes a universe of concurring and conflicting themes.¹⁴ Generally, at the heart of discussions concerning transitional justice are questions about the type of objectives a society should pursue after a conflict ends.¹⁵ These dilemmas can be summarized in the following two questions: (1) Is it necessary and feasible to punish all the perpetrators of mass crimes? (2) If so, should the punishment conceived only hold the guilty accountable or should it also contribute to wider reconciliation objectives? These are profound and difficult questions that must be addressed in a prompt manner by arbiters of transitional justice.¹⁶

Further, there is also a third relevant but unattended question: who must be the one responsible for judging crimes in transitional justice systems? In other words, studies on the subject have widely reviewed what happens before and after transitional justice models are created to resolve an armed civil or political conflict. Yet, they have stopped short of analyzing the selection processes and appointment criteria of the judges who will have to bear this very important responsibility.

The academic analysis around transitional justice legal institutions has not concentrated on the selection process of the judges who will have to answer complicated questions regarding peace and justice. Authors like Alex Schwartz

¹² An example of this is the Rwandan case. After the Tutsi Genocide, the United Nations sponsored the creation of an international tribunal to pursue and punish the main perpetrators. However, the Rwandan government—inspired by the country’s traditional tribal conciliation process and pressed by the international community to take action—promoted the creation of the Gacaca Courts. These Courts were composed by *inyangamugayo* (wise and respected leaders) with no legal training who were appointed by popular vote. Gacaca coexisted with the national judiciary and its principal mission was to confront the perpetrators in public hearings and impose an alternative punishment, even for those accused of genocide whose cases were also referred to the national judicial system or the International Criminal Tribunal for Rwanda. See generally PHIL CLARK, *THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA* 1–27 (2010).

¹³ KENJI YOSHINO, *A THOUSAND TIMES MORE FAIR: WHAT SHAKESPEARE’S PLAYS TEACH US ABOUT JUSTICE* 4 (2012).

¹⁴ For example, there is an entire field of study within transitional justice that tries to promote a unified theory of the concept. However, even in these scholarly efforts there is an acknowledgement that there are at least two types of transitional justice. The first one refers to models of historic justice put in place by established democracies that try to readdress abuses from the past. The other one relates to the practices of judicial adjudication developed by countries emerging from war or autocratic governments. This illustrates the difficulties of trying to consolidate a single doctrinal model for transitional justice. See Stephen Winter, *Towards a Unified Theory of Transitional Justice*, 7 INT’L J. TRANSITIONAL JUST. 224, 224–227 (2013).

¹⁵ COLLEEN MURPHY, *THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE* 11–20 (2017).

¹⁶ See, e.g., Makau Mutua, *Republic of Kenya Report of the Task Force on the Establishment of a Truth, Justice, and Reconciliation Commission*, 10 BUFF. HUM. RTS. L. REV. 15, 169 (2004). Transitional justice involves a “‘set of inter-related principles and processes centered’ around the imagined role of law and law-making ‘in constituting transition’ toward a range of goals and ends. These goals and ends can include, amongst others: the restoration of the ‘rule of law’; judicial retribution designed to counter a culture of impunity; recompense and the restoration of dignity to victims; reform of institutions; social and political reconciliation; ‘nation-building’ and the re-constitution of the past on the basis of ‘shared narrative.’” Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35 J. L. & SOC’Y 265, 267 (2008).

and Melanie Murchinson¹⁷ have written abundantly about the politics behind the decision-making process inside Courts.¹⁸ Likewise, Lawrence Freidman¹⁹ has conducted extended research around the power dynamics related to jury selection and other forms of appointments within the judiciary.²⁰ However, the recent Colombian experience presents a unique opportunity to quantitatively and qualitatively study the judicial selection process in transitional justice contexts.

With these ideas in mind, this Article intends to present the history of how Colombian society has recently tried to answer the hard questions related to this issue. The SJP presents an opportunity to examine a revolutionary proposal to form Transitional Justice tribunals.²¹ As it will be explained in the following section, the Peace Agreement conceived a unique but untested way to appoint the judges of the SJP. Conventionally, the way of appointing judges for this type of institution has been a top-down approach.²² This approach involved the selection of justices from the rank and file of victors in wars (like in the case of the International Military Tribunals created in Nuremberg and Tokyo after World War II), through the United Nations Security Council (for the case of the International Criminal Tribunals for the Former Yugoslavia and Rwanda) or by International Bodies comprised only by States (like the case of the Assembly of State Parties of the Rome Statute regarding the International Criminal Court).²³

In contrast, for the first time, the selection process of the judges of the SJP was conducted by an independent committee appointed by third parties designated by the Colombian Government and the FARC.²⁴ Also, unlike the vast majority of transitional justice institutions, only Colombian lawyers were appointed to the new Tribunal²⁵ and the selection process was executed through

¹⁷ Alex Schwartz & Melanie Janelle Murchison, *Judicial Impartiality and Independence in Divided Societies: An Empirical Analysis of the Constitutional Court of Bosnia-Herzegovina*, 50 L. & SOC'Y REV. 821 (2016).

¹⁸ *Id.*

¹⁹ Lawrence M. Friedman, *Benchmarks: Judges on Trial, Judicial Selection and Election*, 58 DEPAUL L. REV. 451 (2009).

²⁰ *Id.*

²¹ Juan Orozco, *A Closer Look at Colombia's Special Jurisdiction for Peace*, FRANCE 24 (Jan. 14, 2019), <https://www.france24.com/en/20190114-focus-colombia-special-jurisdiction-peace-process-farc-guerrilla-civil-war-tribunal-justice>.

²² Davis R. Robinson, *The Role of Politics in the Election and the Work of Judges of the International Court of Justice*, 97 AM. SOC'Y INT'L L. 277 (2003).

²³ For details of the selection process in these Courts, see Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 2, Aug. 8 1945, 82 U.N.T.S. 279, 59 Stat. 1544 (Nuremberg Charter) and Rome Statute of the International Criminal Court art. 37, July 17, 1998, 2187 U.N.T.S. 90 (Rome Statute).

²⁴ For a more detailed account on the conformation of the Selection Committee, see *infra* Chapter 2.

²⁵ See Laura Íñigo Álvarez, *The Special Jurisdiction for Peace in Colombia: Challenges and Opportunities for Accountability*, Ucall (Apr. 9, 2018), <http://blog.ucall.nl/index.php/2018/04/the-special-jurisdiction-for-peace-in-colombia-challenges-and-opportunities-for-accountability/>. This was a contentious point of the peace agreement. The original accord provided that the SJP was going to be composed of 38 Colombian judges and ten foreign judges. However, the agreement was rejected by a thin margin in a plebiscite held on October 2, 2016. After the defeat, the government was forced to renegotiate the agreements with the political opposition who, during the plebiscite campaign, constantly asserted that one of the main problems of the agreement was the selection of foreign judges to the SJP. For them, this translated to an unacceptable affront to the country's sovereignty. The new agreement, signed by the parties on November 2016 and approved by the Colombian Congress the following month, eliminated any reference to foreign judges as a concession to the accord's opposition. See Office of the Colombian High Commissioner for Peace, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Nov. 24, 2016 [hereinafter Peace Agreement].

an online platform that was open to public comments regarding the candidates' qualifications and proficiency.²⁶ Further, the Peace Agreement included clear formal criteria—related specifically to affirmative action in favor of minorities—that served as the guideline for the selection process of the justices.²⁷ Understanding the way those orchestrating judicial appointments to the SJP applied this abstract formal criterion not only exemplifies the impact of this new experiment on transitional justice but also helps answer a broader question about judicial independence in transitional scenarios. Courts are institutions run by human beings, so they are affected by subjective influences.²⁸ Because of this, judicial independence is not directly observable. Thus, empirical studies have to rely on certain proxies to evaluate independence.²⁹ One of the more common and reliable proxies is the appointment process, because in these scenarios the profile of a particular court is molded.³⁰ The filters applied in this process are key elements used to determine the kind of institution the Special Jurisdiction for Peace is destined to be in the future.

This Article outlines the trials and tribulations surrounding the selection process for the SJP.³¹ In the heat of the current political debate concerning the implementation of the Peace Agreement, it is important to understand the origin of the institution that has the extraordinary challenge of closing, in a judicial sense at least, this chapter of violence in Colombia's history.

Currently, the legitimacy of the SJP is questioned by many political groups that oppose recognizing it as a fundamental gear of the country's political transition.³² In fact, even the existence of the SJP is in peril as the last presidential election dramatically changed the distribution of power. Now, those sectors who opposed the Peace Agreement won the election.³³ These sectors

²⁶ For purposes of the process, the webpage www.comitedeescogencia.com was created. COMITE DE ESCOGENCIA, <http://www.comitedeescogencia.com/> (last accessed Apr. 26, 2019). All the applications were submitted through that webpage.

²⁷ For a description of the constitutional provision enacting the criteria, see *infra* Chapter 2.

²⁸ CASS R. SUNSTEIN, *CONSTITUTIONAL PERSONAE* 3–5 (2015).

²⁹ Lewis A. Kornhauser, *Is Judicial Independence a Useful Concept?*, in *JUDICIAL INDEPENDENCE AT THE CROSSROADS: AN INTERDISCIPLINARY APPROACH* 45 (Stephen B. Burbank & Barry Friedman eds., 2002).

³⁰ *Id.*

³¹ Peace Agreement, *supra* note 25.

³² For example, the right-leaning Democratic Center political party constantly used social media to frame attacks against the SJP based on uncorroborated rumors and fake news. *Deceptive Campaigns of the Democratic Center Against JEP*, *EL ESPECTADOR* (Feb. 2, 2019), <https://colombia2020.elespectador.com/jep/las-campanas-enganosas-del-centro-democratico-contrala-jep>.

³³ Iván Duque Escobar, a young Colombian senator who is part of a right-wing coalition that has systematically opposed the terms of the Peace Agreement, won the 2018 presidential election. In a recent interview, when questioned about the results of the selection process of the justices of the SJP, Mr. Duque replied with the following: "I believe that the selection process of the SJP sponsored the appointment of certain people that have more merits as political activists than as prominent legal scholars..". Julio Sánchez Cristo, *El Verdadero Duque*, *EL TIEMPO* (Apr. 28, 2018), <https://www.eltiempo.com/bocas/entrevista-de-bocas-al-candidato-ivan-duque-210116> (translated from Spanish by the author). Obviously, this generates a lot of suspicions, negative hunches and concerns." In the same interview, Mr. Duque even questioned those responsible for appointing the judges. On this matter he said the following: "I also think that the parties committed a mistake in the design of the selection process when it allowed a former judge of the Inter-American Human Rights Court to participate in the deliberations and decisions regarding these appointments. This person, who on several occasions in the past decided against the Colombian State for events that could be examined again under the jurisdiction of the SJP, had a clear conflict of interest.". *Id.*

have openly denounced the creation of the Tribunal and have suggested that it be dissolved.³⁴

That said, this work is not a political vindication of the SJP, nor a response to the opposition critics against the Peace Agreement, nor an assessment of the Tribunal's independence in practice. Although there are a myriad of controversies surrounding the Court, as of the time of writing, the SJP has yet to decide its first case. Therefore, there is no information that allows researchers to fully address these important questions. That is why these discussions, though valuable, are not relevant for the purposes of this research. Instead, the findings and conclusions presented here seek to be an input for a more qualified discussion of the consolidation of peace in Colombia. Also, this Article is not about the construction of social and legal legitimacy in times of transition. Of course, courts that have the enormous task of assessing the responsibility for mass atrocities require robust support from civil society to function properly. The process of selecting judges is the initial milestone needed to achieve this goal. Yet, the acceptance of the Tribunal in the social fabric of the country will take time. That is why, given that this work evaluates a concrete timeframe for SJP's creation process, the discussions involving this subject are deliberately omitted.³⁵

The second Part of this Article includes a background of the Colombian civil war as well as the context of the Peace Agreement signed in 2016 between the State and the FARC. It also surveys the transitional justice model set by the 2016 Peace Agreement and gives a detailed explanation of the formal criteria that the Accord provided for the SJP judicial selection process. The third Part presents a qualitative study of the selection process that draws from ten interviews conducted in Colombia. This Part describes the experiences of those who were directly involved in the selection of the SJP. The interviewees include the Peace Agreement's political opponents, commissioners of the Selection Committee (SC) in charge of appointing the members of the new SJP institutions, and judicial candidates applying to sit on this Court.

The fourth Part presents the findings of a quantitative methodology that evaluates the raw data obtained from all the applications received by the SC's online selection process platform. That Part evaluates the CVs of the candidates through a 69-variable codebook.³⁶ The findings are then presented to understand how the Commissioners understood and applied the formal selection criteria. Finally, the last Part will present conclusions regarding this study's quantitative

³⁴ In October 2017, a group of senators from the Democratic Center Party—led by the main leader of the opposition, former President of Colombia Álvaro Uribe Vélez—filed a petition to the Colombian Electoral Commission that sought to call for a national referendum to revoke the SJP.

³⁵ However, it goes without saying that the first months of the SJP have been turbulent, to say the least. In April 2017, the Secretary of the Tribunal in charge of the administrative and logistical organization of the Court resigned, alleging an internal struggle among the justices for the control of the budget. The Chief Justice of the SJP denied these allegations and accused the Secretary of mishandling money and procuring inadequate equipment that hindered the normal work of the Court. As of June, 2017, the Court remains understaffed and, according to some Colombian news outlets, there is a shortage of basic supplies such as paper and ink. Diana Durán, *Una Pelea Que Opaca a la JEP*, EL ESPECTADOR (Apr. 27, 2018, 9:00 PM), <https://www.elespectador.com/noticias/judicial/una-pelea-que-opaca-la-jep-articulo-752622>.

³⁶ The codebook can be found in Appendix B of the research proposal.

and qualitative findings and offers potential paths and directions for further research in the field.

I. BACKGROUND

A famous English historian described Colombia as a *Nation in Spite of Itself*.³⁷ There is no consensus, among scholars, about the moment when the current five decades-long conflict started, but two main theories can be identified.³⁸ One theory, championed by foreign scholars such as Daniel Pécaut, traces the birth of the war to April, 1948 when the liberal leader Jorge Eliécer Gaitán, an anti-establishment politician with popular support among peasants and blue-collar workers, was killed.³⁹ The assassination sprouted profound civil unrest with mass protests in the main cities of the country, especially in the capital Bogotá, where public confrontations between the Armed Forces and the protesters ended with an untold number of deaths and the destruction of most of the city's infrastructure.⁴⁰ This event gave rise to sectarian political violence between the Liberal and Conservative parties—the main parties in power in Colombia—that later was named *La Violencia* (The Violence).⁴¹

The other theory, advanced most prominently by Colombian social scientists like Jorge Orlando Melo, recognizes the effect of *La Violencia* in the creation of the first guerilla groups in the country, but sets the starting point of the conflict in 1964.⁴² That was the year when the FARC was founded by Manuel Marulanda Vélez. Marulanda Vélez was a peasant leader who cofounded an independent republic in Southern Colombia as a reaction to the State's violence against liberal and communist leaders and the excessive concentration of land in the hands of the political and economic elite.

Whatever its origins, for over 50 years, the country has faced a bloody and cruel civil conflict.⁴³ Some of the most conservative studies have estimated that the total death toll of the war may be 220,000.⁴⁴ Further, the majority of the casualties have been civilians. It is estimated that approximately 81% of those killed in the conflict are non-combatant civilians.⁴⁵ This represents, according to the data collected by the government's Center for National Memory, around

³⁷ DAVID BUSHNELL, *THE MAKING OF MODERN COLOMBIA: A NATION IN SPITE OF ITSELF* vii-x (1993).

³⁸ MARCO PALACIOS, *BETWEEN LEGITIMACY AND VIOLENCE: A HISTORY OF COLOMBIA, 1875-2002*, at 135–169 (2006).

³⁹ DANIEL PÉCAUT, *ORDEN Y VIOLENCIA: COLOMBIA 1930-1953* (1987).

⁴⁰ HERBERT BRAUN, *THE ASSASSINATION OF GAITÁN: PUBLIC LIFE AND URBAN VIOLENCE IN COLOMBIA* 3–11 (1985).

⁴¹ ROBERT A. KARL, *FORGOTTEN PEACE: REFORM, VIOLENCE, AND THE MAKING OF THE CONTEMPORARY COLOMBIA* 1–15 (2017).

⁴² JORGE ORLANDO MELO, *HISTORIA MÍNIMA DE COLOMBIA* (2017).

⁴³ ANNETTE IDLER, *BORDERLAND BATTLES: VIOLENCE, CRIME AND GOVERNANCE AT THE EDGES OF COLOMBIA'S WAR* 123–57 (2019).

⁴⁴ CENTRO NACIONAL DE MEMORIA HISTÓRICA, DEPARTAMENTO ADMINISTRATIVO PARA LA PROSPERIDAD SOCIAL, *INFORME GENERAL DE MEMORIA Y CONFLICTO ¡BASTA YA! COLOMBIA: MEMORIAS DE GUERRA Y DIGNIDAD* 32 (2013).

⁴⁵ *Id.*

180,000 civilian victims.⁴⁶ In other words, as a civilian the probability of being a victim in the Colombian conflict was approximately nine times higher than a military or a guerrilla member. To put it in context, according to the United Nations the global average annual murder rate for 2012, the year the peace negotiation between the government and the FARC started, was 6.2 murders per 100,000 inhabitants.⁴⁷ For that same year, the average in Colombia was 31.3 murders per 100,000 inhabitants.⁴⁸

Since the beginning of the conflict, peace has been an elusive goal for Colombians.⁴⁹ The Government and the FARC formally initiated at least two peace processes with no results before the current agreement was signed.⁵⁰ The first peace talks were held in the 1980's and ended with the signing of the *Acuerdos de la Uribe*, named after the Colombian town where the agreement was signed.⁵¹ This Accord contemplated a bilateral cease fire and the creation of the *Unión Patriótica*, a political movement formed by guerrilla members and different representatives of the civil society, such as union and peasant leaders.⁵² However, the agreement collapsed after only one year of implementation.⁵³ Systematic violations of the cease fire by both parties, armed pressured against voters committed by the guerrillas and, most notoriously, the extermination of the *Unión Patriótica* by paramilitary groups with strong ties to the military⁵⁴, set the conditions for the processes failure.⁵⁵

The second peace process started in 1998.⁵⁶ On October 14 of that year, the Colombian Government, then lead by the conservative President Andrés Pastrana, created a 42,000-square kilometer demilitarized zone—similar in size to Denmark or The Netherlands—in the south of the country to foster peace negotiations.⁵⁷ Five months later, President Pastrana and Manuel Marulanda Vélez signed the *Acuerdo de Caquetenia* where a time frame was set to sign a Peace Agreement by the end of the year.⁵⁸ During the negotiations, there were a few advancements, such as a prisoner exchange and the agreement on a very

⁴⁶ *Id.*

⁴⁷ U.N. OFF. ON DRUGS AND CRIME [UNODC], GLOBAL STUDY ON HOMICIDE 2013: TRENDS, CONTEXTS, DATA, at 12, U.N. Sales No. 14.IV.1 (2014).

⁴⁸ *Id.* at 24.

⁴⁹ Robert A. Karl, *Here's the Century-Long History Behind Colombia's Peace Agreement with the FARC*, WASH. POST (Oct. 1, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/10/01/heres-the-century-long-history-behind-colombias-peace-agreement-with-the-farc/?noredirect=on&utm_term=.f83af98b8ec5.

⁵⁰ *Id.*

⁵¹ MICHAEL J. LAROSA & GERMÁN R. MEJÍA, COLOMBIA: A CONCISE CONTEMPORARY HISTORY 238–43 (2012).

⁵² See generally STEVEN DUDLEY, ARMAS Y URNAS: HISTORIA DE UN GENOCIDIO POLÍTICO (2008).

⁵³ *Id.*

⁵⁴ The Inter-American Court of Human Rights has described the extermination of the *Unión Patriótica* as a political genocide due to the fact that around 5,000 of its members were killed or forced into exile solely on the basis of their ties with the party. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶81 (May 26, 2010).

⁵⁵ DUDLEY, *supra* note 52.

⁵⁶ See Larry Rohter, *Colombia Begins Talking Peace with Rebels*, N.Y. TIMES, (Oct. 25, 1999), <https://www.nytimes.com/1999/10/25/world/colombia-begins-talking-peace-with-rebels.html>.

⁵⁷ *Id.*

⁵⁸ See HARVEY F. KLINE, CHRONICLE OF A FAILURE FORETOLD: THE PEACE PROCESS OF COLOMBIAN PRESIDENT ANDRÉS PASTRANA 69 (2007).

limited Christmas cease fire.⁵⁹ However, the parties were incapable of reaching important settlements about international supervision, a permanent and bilateral cease fire, nor a compromise from FARC to end the kidnapping of civilians as a source of revenue.⁶⁰ Also, those years involved a radical expansion of paramilitary groups that opposed the peace process.⁶¹ After several problems, on February 20, 2002, President Pastrana ended the negotiations and ordered the Armed Forces to claim the DMZ.⁶²

This spiral of violence only worsened until a ray of hope appeared on the horizon: after almost two years of secret exploratory meetings between delegates of the Government and FARC, the President of Colombia, Juan Manuel Santos, announced publicly on September 2012 that formal peace talks were beginning in Havana, Cuba.⁶³

After four years of negotiations, on August 24, 2016, the Colombian Government signed a peace agreement with FARC to end the 50-year civil conflict.⁶⁴ This ongoing Accord has been the most successful peace attempt to date. Proof of this is that the agreement is currently being implemented by the parties. Nevertheless, the implementation has not been without difficulties.⁶⁵ A central part of the Agreement conceived a System of Truth, Justice, Reparation and Non-Repetition.⁶⁶ Under this system, the Special Jurisdiction for Peace (SJP) was established as the cornerstone of the transitional justice system.⁶⁷ This Jurisdiction for Peace, based on the terms of the Agreement, was conceived as the institution that will exercise judicial functions, fulfilling the duty of the Colombian state to investigate, prosecute and punish crimes committed in the context of and due to the armed conflict, particularly the most serious and significant.⁶⁸

⁵⁹ *Id.* at 69–82.

⁶⁰ *Id.*

⁶¹ See generally MARÍA TERES RONDEROS, *GUERRAS RECICLADAS: UNA HISTORIA PERIODÍSTICA DEL PARAMILITARISMO EN COLOMBIA* (2014).

⁶² KLINE, *supra* note 58.

⁶³ William Neuman, *Rebel Group in Colombia Announces a Cease-Fire*, N.Y. TIMES, (Nov. 19, 2012), <https://www.nytimes.com/2012/11/20/world/americas/colombia-rebels-announce-cess-fire.html>.

⁶⁴ Nicholas Casey, *Colombia Signs Peace Agreement with FARC After 5 Decades of War*, N.Y. TIMES, (Sept. 26, 2016), <https://www.nytimes.com/2016/09/27/world/americas/colombia-farc-peace-agreement.html>.

⁶⁵ The implementation of the Peace Agreement has come with many perils. The harassment against social leaders is systemic and many of them have been killed by criminal organizations that have occupied the spaces left by FARC. FARC dissident groups still control the drug traffic in many regions. Proof of this is the difficult situation in the southern part of the country in the frontier with Ecuador. On March 26, 2018, two Ecuadorian journalists—Javier Ortega and Paúl Rivas—and their driver—Javier Segarra—were kidnapped by a FARC splinter group, while investigating the sudden outbreak of violence in the region. Unfortunately, the hostages were killed by this group, on or before April 13. Jules Giraudat, “*This Border Is Out of Control: Journalists’ Murders Shock Ecuador*,” GUARDIAN (Oct. 24, 2018), <https://www.theguardian.com/world/2018/oct/24/ecuador-journalist-safety-colombia-mataje-murders>.

⁶⁶ Following the peace accords, a constitutional amendment was enacted by Congress in order to create the new institutions in charge of its implementation. See CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 1 (Colom.) [hereinafter CONSTITUTION].

⁶⁷ *Id.* at art. 5, amend. 1.

⁶⁸ The objectives of the SJP, as provided by the Constitutions, are as follows: “satisfy the victims’ right to justice, provide truth to the Colombian society, protect the victims’ rights, contribute to the consolidation of a stable and lasting peace, and enact decisions that guarantees judicial security for those who participated directly or indirectly in the armed conflict.” CONSTITUTION, *supra* note 66, at art. 5, amend. 1 (translated from Spanish by the author).

By definition of the Agreement, the SJP⁶⁹ consists of a Special Prosecution Office, three Judicial Chambers and a Peace Tribunal (PT).⁷⁰ This Tribunal's mission is to administer justice by investigating, clarifying, prosecuting and punishing serious human rights violations and serious violations of international humanitarian law.⁷¹ As part of the implementation process, Congress enacted a Constitutional Amendment in April 2017 to establish the SJP. As provided for in the Amendment, the SJP is divided into five main components. First, the Special Prosecution Office (SPO) is in charge of collecting evidence and presenting charges against the main perpetrators of human rights violations.⁷² The SPO has the authority to decide which claims to bring first to the SJP.⁷³ For example, recently the head of the Office announced that he was going to prioritize cases involving sexual violence against women and the forced recruitment of minors.⁷⁴ Also, and more importantly, the constitutional reform incorporated a provision, based on the terms of the Accord, stating that the conformation of the SJP had to follow a differential balance in favor of women, ethnic communities and regional representatives.⁷⁵

Second, the Chamber for the Recognition of Truth and Responsibilities (CRTR) is the entry point to the system.⁷⁶ First, an individual must acknowledge responsibility for a crime under the SJP's jurisdiction.⁷⁷ Alternatively, there must be credible information indicating that a person is responsible for a serious violation of human rights law or international human rights law.⁷⁸ Second, the CRTR will separate the more serious and significant cases from those of a political nature that can be pardoned.⁷⁹ In the latter cases, the Chamber of Pardon and Amnesty (CPA) will grant a formal pardon. In the former, the Chamber of Definition of Judicial Situations (CDJS) will determine if the case can be subject to any form of alternative punishment—pecuniary or symbolic reparations for example—and then be dismissed. Further, the CDJS will determine whether a case must be submitted to the Peace Tribunal for investigation.⁸⁰

⁶⁹ An infographic of the SJP is found in Appendix A of the Article.

⁷⁰ CONSTITUTION, *supra* note 66, at art. 7, amend. 1.

⁷¹ Peace Agreement, *supra* note 25, at 154.

⁷² CONSTITUTION, *supra* note 66, at ch. VII art. 3.

⁷³ *Id.*

⁷⁴ Anastasia Moloney, *Colombia War Tribunals Hope to Heal Wounds, Punish Atrocities*, REUTERS (Feb. 12, 2018), <https://www.reuters.com/article/us-colombia-warcrimes-tribunals/colombia-war-tribunals-hope-to-heal-wounds-punish-atrocities-idUSKBN1FW0AE>.

⁷⁵ The exact constitutional provision is the following: "The SJP will have a gender and ethnical differential approach based on the particular characteristics of the victims in each region of the country and will be specially focused on the protection and early care for women and children victims of the armed conflict. This differential approach should apply to all the stages and procedures of the SJP, especially those involving women who have been victims of the conflict. *The composition of the SJP should take into account the equal participation of men and women and an ethnical and cultural diversity approach, as well as the principles of publicity, transparency, citizen participation and ethical suitability of the candidates.*" CONSTITUTION, *supra* note 66, at art. 1 ¶ 1 (emphasis added) (translated from Spanish by the author).

⁷⁶ *Id.* at art. 7 ¶ 1.

⁷⁷ Members of the SJP will judge and impose sanctions on those responsible for the crimes committed in the context of the armed conflict, particularly the most serious, such as crimes against humanity, genocide, and grave war crimes. *Id.* at art. 1.

⁷⁸ *Id.* at art. 7.

⁷⁹ *Id.*

⁸⁰ *Id.*

Finally, the Peace Tribunal (PT) itself is divided into five sub-sections. The first sub-section is responsible for judging—in the first instance—those cases where the accused has accepted responsibility.⁸¹ In such cases, the section can impose a sentence of between five to eight years and may determine alternative restrictions on liberty beyond prison time.⁸² In contrast, in those cases where there is not any acceptance of responsibility, the second sub-section can impose sanctions between 15 to 20 years in prison without any alternative sanction.⁸³ The third sub-section works as an appeals chamber for the first and second sections in case any accused individual submits a petition for appeal.⁸⁴ The fourth sub-section is in charge of reviewing any case previously resolved by the ordinary criminal system and determines if it can be also considered by the Peace Tribunal.⁸⁵ Once the term of the Tribunal is fulfilled—both the Peace Accord and Constitutional Amendment establish that the Tribunal will work for 15 years—a fifth sub-section will be created.⁸⁶ This chamber—known as the Stability and Efficacy Chamber (SEC)—will ensure that all the sanctions imposed by the PT are effectively observed.⁸⁷ Also, in extraordinary cases, the chamber will judge actions committed before the Peace Agreement was ratified that were not resolved by the SJP.⁸⁸

There were only four formal limitations imposed on being eligible to serve as a judge for any of the components and chambers of the SJP. The first one, as explained in the introduction, was related to nationality.⁸⁹ Only Colombian lawyers were able to submit their application during the selection process.⁹⁰ The second limitation was that each candidate had to have ten years of legal experience to be eligible for the CRTR, CPA and CDJS.⁹¹ For the PT, candidates had to have 15 or more years of experience.⁹² Both conditions were added explicitly in the Peace Agreement and the Amendment that inserted the SJP in the Colombian Constitution.⁹³ The third rule was introduced by the SC itself.⁹⁴ It allowed candidates to apply for either the Chambers or the Tribunal but not both. According to *Commissioner Hemingway*,⁹⁵ this decision was conceived as a way to divide the revision work in a more efficient way and to avoid the perception that the Chambers were a “consolation prize.”⁹⁶ The idea of the SC

⁸¹ *Id.*

⁸² *Id.*

⁸³ Peace Agreement, *supra* note 25, at sec. 5.1.2 ¶¶ 60–62.

⁸⁴ CONSTITUTION, *supra* note 66, at art. 7 ¶ 1.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Interview with *Commissioner Hemingway*, Commissioner of the SJP Selection Committee, in Bogotá, Colom. (Dec. 20, 2017) [hereinafter Interview with *Commissioner Hemingway*]. The names of the interviewees are italicized and have been changed to protect their anonymity, as well as their gender. The interviews were conducted by the Author and are not published, as the Author’s sole property, upon the wishes of the interviewees.

⁹⁵ *Id.*

⁹⁶ *Id.*

was to give both seats the same relevance and importance in the process.⁹⁷ The last criterion was related to the expertise of the candidates. The Agreement provided that although the candidates could be experts in any area of law, all of them had to have high qualifications and expertise in Human Rights, International Humanitarian Law and Conflict Resolution.⁹⁸ However, originally, the Peace Accord did not contemplate any design for selecting the SJP judges.⁹⁹

This is why the parties signed an addendum on August 12, 2016, where they agreed that the SC would be constituted by third parties that would be in charge of appointing the 51 judges of the SJP.¹⁰⁰ Following the terms of this agreement, the Commission was to be composed of the following members: (i) one member appointed by the Colombian Supreme Court; (ii) one member appointed by the European Court of Human Rights; (iii) one member appointed by the Colombian System of Public Universities; (iv) one member appointed by the Secretary General of the United Nations; and (v) one member appointed by the International Centre for Transitional Justice.¹⁰¹

After the failed plebiscite, the new Peace Accord was submitted to the Colombian Congress for its approval.¹⁰² On November 30, 2016, the Congress ratified the Agreement and its implementation officially started.¹⁰³ On January 26, 2017, the Supreme Court appointed Justice José Francisco Acuña Vizcaya as its representative to the SC.¹⁰⁴¹⁰⁵ The next day, Antonio Guterres—Secretary General of the United Nations—announced that Diego García-Sayan—a former Minister of Justice of Peru who also served as the UN Special Rapporteur for

⁹⁷ *Id.*

⁹⁸ Peace Agreement, *supra* note 25, at §5.1.1.1.5.

⁹⁹ *Id.*

¹⁰⁰ EQUIPO PAZ GOBIERNO, COMUNICADO CONJUNTO 88: MECANISMO DE SELECCION DE LOS MAGISTRADOS DE LA JURISDICCION ESPECIAL PARA LA PAZ (2016), <http://equipopazgobierno.presidencia.gov.co/prensa/Paginas/comunicado-conjunto-mecanismo-seleccion-magistrados-jurisdiccio-especial-paz.aspx>.

¹⁰¹ Initially, the parties agreed that one representative was going to be appointed by Pope Francis. However, on August 31, 2016 the Pope declined the invitation to form part of the SC. Adriaan Alsema, *Pope Francis Declines Invitation to Help Pick Judges for Colombia Post-Conflict Court*, COLOM. REP. (Aug. 31, 2016), <https://colombiareports.com/pope-francis-declines-invitation-help-pick-judges-colombia-post-conflict-court/>. He reasoned that, although he fully supported the Peace Agreement, other institutions were better fit to select the judges of the SJP. *Id.* The next day, the government and the FARC agreed that the vacancy was going to be filled by an appointee from the European Court of Human Rights. See Mark Kersten, *Between Ordinary and Extraordinary—The Contentious First Steps of the Special Jurisdiction for Peace in Colombia*, JUST. CONFLICT (Jan. 8, 2019), <https://justiceinconflict.org/2019/01/08/between-ordinary-and-extraordinary-justice-the-contentious-first-steps-of-the-special-jurisdiction-for-peace-in-colombia/>.

¹⁰² Sibylla Brodzinsky, *Colombia Referendum: Voters Reject Peace Deal with FARC Guerrillas*, GUARDIAN (Oct. 3, 2016), <https://www.theguardian.com/world/2016/oct/02/colombia-referendum-rejects-peace-deal-with-farc>.

¹⁰³ Nicholas Casey, *Colombia's Congress Approves Peace Accord with FARC*, N.Y. TIMES (Nov. 30, 2016), <https://www.nytimes.com/2016/11/30/world/americas/colombia-farc-accord-juan-manuel-santos.html>.

¹⁰⁴ Letter from Eugenio Fernández Carlier, Judge of the *Sala de Casación Penal*, to Sergio Jaramillo Caro & Ivan Márquez, Representatives of Colombian government and FARC, (January 25, 2017), <http://www.cortesuprema.gov.co/corte/index.php/2017/01/26>.

¹⁰⁵ *¿Quiénes son los Juristas que Llegan a la Corte Suprema de Justicia?*, SEMANA (Mar. 10, 2016), <https://www.semana.com/nacion/articulo/quienes-son-los-nuevos-magistrados-de-la-corte-suprema-de-justicia/464825>.

Judicial Independence and as Chief Justice of the Inter-American Court of Human Rights—was designated as the UN envoy to the SC.¹⁰⁶

On February 8th, the Spanish Professor Alvaro Gil Robles was appointed by the European Court of Human Rights.¹⁰⁷ Mr. Gil Robles is the former Ombudsman in Spain and worked as a commissioner on the Commission created to investigate and clarify the Police Repression in the Basque Country during Franco's dictatorship.¹⁰⁸ The next day, the International Centre for Transitional Justice appointed the Spanish Professor Juan E. Méndez.¹⁰⁹ Professor Méndez was chairman of the Centre between 2004 and 2009. He also was the UN Special Rapporteur for Torture and Cruel Punishment and a Special Advisor to the UN Secretary General for the prevention of Genocide.¹¹⁰

Finally, on February 16, the board of the System of Public Universities appointed Professor Claudia Vaca as their representative.¹¹¹ Professor Vaca, a chemical pharmacologist who has tenure in the National University and before joining the SC, had experienced working in the Public Health sector as special advisor for the Colombian Ministry of Health, was the only woman in the SC and the only commissioner without a legal background.¹¹² Unanimously, the other Commissioners appointed her as the chairwomen of the SC.¹¹³ In a ceremony on April 5, 2017, that included the participation of President Juan Manuel Santos, the Committee was formally installed.¹¹⁴ But as the next sections will explain, the work and challenges that awaited the SC were considerable.

II. THE SELECTION PROCESS

The same month the Committee was formed it immediately had to address several problems. The first problem was related to funding.¹¹⁵ The SC was not created by any bill or disposition enacted by the Congress. This meant that there

¹⁰⁶ Biographical Note, Secretary General, Secretary-General Appoints Diego García-Sayán of Peru as Member of Selection Mechanism, Special Jurisdiction for Peace in Colombia, U.N. Press Release SG/A/1702-BIO/4926 (Jan. 27, 2017), <https://www.un.org/press/en/2017/sga1702.doc.htm>.

¹⁰⁷ *Elegirá a Magistrados de la JEP*, EL ESPECTADOR (Feb. 15, 2017), <https://www.elespectador.com/noticias/judicial/lista-comision-que-elegira-magistrados-de-la-jep-articulo-680068>.

¹⁰⁸ Santiago Martínez Hernández, “A 8000 Kilómetros de Distancia no Puede Haber Lobby Politico”: Alvaro Gil, EL ESPECTADOR (July 5, 2017), <https://colombia2020.elespectador.com/jep/8000-kilometros-de-distancia-no-puede-haber-lobby-politico-alvaro-gil>.

¹⁰⁹ *ICTJ Names Human Rights Leader Juan E. Mendez to Colombia Justice Committee*, ICTJ PRESS OFF. (Feb. 3, 2017), <https://www.ictj.org/news/ictj-human-rights-juan-m%C3%A9ndez-colombia-justice>.

¹¹⁰ *Id.*

¹¹¹ Cecilia Orozco Tascón, “Mantuvimos un Encierro Cardenalicio”: Claudia Vaca, EL ESPECTADOR (Sept. 30, 2017), <https://www.elespectador.com/noticias/politica/mantuvimos-un-encierro-cardenalicio-claudia-vaca-articulo-715791>.

¹¹² *Id.*

¹¹³ Pregunta Yamid, *Pregunta Yamid: Claudia Vaca, Presidenta del Comité de Escogencia de la JEP*, YOUTUBE (July 25, 2017), <https://www.youtube.com/watch?v=QCoimwPkI20>.

¹¹⁴ *Tres Extranjeros Entre los Delegados para el Comité de Escogencia*, EL TIEMPO (Feb. 7, 2019), <https://www.eltiempo.com/politica/proceso-de-paz/comite-de-escogencia-para-la-justicia-especial-para-la-paz-75362>.

¹¹⁵ Interview with *Commissioner Hemingway*, *supra* note 94.

was not any allocation from the public budget for the Committee's work.¹¹⁶ Hence, the first task of the SC was to submit an application to the Post-Conflict Multi-Partner Trust Fund for Colombia (PCTF), an international donor fund run by the United Nations and created with the sole purpose of funding projects related to post-conflict stabilization, confidence building measures and preparation for and implementation of the Peace Agreements.¹¹⁷ According to *Commissioner Hemingway* the negotiations with the PCTF were not easy. In particular, there were a lot of discussions regarding the development of the digital platform that was going to host the information of all the candidates to the SJP.¹¹⁸

On one hand, for budgetary concerns, the PCTF wanted to use an already existing government-run online platform for the SJP selection process.¹¹⁹ Their idea was to build the application from a government-hosted webpage.¹²⁰ On the other hand, after reviewing some of those webpages, the SC concluded that the best alternative, for purposes of independence and transparency, was to build a completely new online platform fully administered by the Committee.¹²¹ For *Commissioner Hemingway*, this decision was critical to guarantee the autonomy of the SC's work. If the platform was hosted on the webpage of a public entity its officials could possibly access information without the consent or the supervision of the SC.¹²² This proposal was received with considerable resistance. In fact, *Commissioner Hemingway* described it as the "most difficult part of the negotiation process with the PCTF."¹²³ The administrators of the fund initially thought that it was impossible to create a brand-new platform in such short notice while the Commissioners were convinced that today's technological advancement make it possible to have an online platform that could host thousands of applicants' information while guaranteeing the security and integrity of the data.¹²⁴

Finally, after all the commissioners were adamantly clear that they were not going to continue their work without a totally independent and digitalized database, the Fund accepted the SC proposal.¹²⁵ The PCTF, after a public request for proposals, approved the project and the SC spent the following weeks working with the selected provider on the specifications of the platform.¹²⁶ *Commissioner Hemingway* explained that this process included not only discussions about the security safeguards for the information but also the best possible ways to quantify the gender, regional and ethnic variables included in the Peace Agreement and the Constitutional Amendment that created the SJP.¹²⁷ In the words of *Commissioner Hemingway*, "the platform had to be designed in a manner that allowed each commissioner to analyze and cross examine all of

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

the candidates' CVs against the differential variables contemplated in the Accords and other important characteristics, such as their level of legal education",¹²⁸

The next challenge following the negotiations over the digital platform was logistical. The five commissioners were appointed on a part-time basis, so they did not have the possibility of being full-time members of the SC.¹²⁹ Also, three of them lived outside Colombia so there was a clear impossibility of working together during long periods of time, at least in person.¹³⁰ As part of the funds allocated by the PCTF to the SC, each Commissioner was able to appoint an administrative clerk to help them with the day to day work of the process.¹³¹ Also, the SC received enough funding to hire a technical staff of around 10 persons whose main responsibility was to process the considerable amount of information received during the application process.¹³²

With these obstacles overcome, the SC formally initiated the appointment process. On July 4, 2017, the Committee simultaneously published on its website and through the country's major news outlets the general terms of the application process.¹³³ The call for applications included a detailed schedule and the instructions for how to complete the online form on the Committee's webpage.¹³⁴ Neither the Peace Accord nor the Constitutional Amendment that created the SJP provided any rules of procedure or timetable for the selection of the judges. In this the SC was completely autonomous.¹³⁵ The Committee decided that the whole process would take three months and that it would be divided in several parts.¹³⁶

The first part, between July 24 and August 2, was the general call for applications.¹³⁷ During this period candidates filled the online form available at the Committee's webpage and uploaded the proper documents certifying their professional and academic background.¹³⁸ From the deadline to August 11th, the SC administrative staff reviewed all the submitted applications and determined if they were properly completed.¹³⁹ This process was just a formal review conducted by the clerks of the SC. At this point, the Commissioners did not have any access to the information.¹⁴⁰ On August 12th, the SC proceeded to publish the CVs of all the candidates who had the required experience to be a judge of the SJP according to the terms set by the Constitution.¹⁴¹ Then, from August 12

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Call for Application for the Selection of the Judges of the Special Jurisdiction for Peace*, COMITÉ DE ESCOGENCIA, <http://www.comitedeescogencia.com/> (last visited Apr. 5, 2019) (hereinafter *Call for Application*).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁴¹ *Los 51 Candidatos para Magistrados de la JEP*, EL ESPECTADOR (Sept. 18, 2017, 4:20 PM), <https://www.elespectador.com/noticias/paz/los-51-candidatos-para-magistrados-de-la-jep-articulo-713798>.

to August 22, the online platform was enabled so that any person, foreign or Colombian, could comment on the suitability of the candidates.¹⁴² From the end of that period to September 17, the SC reviewed all the comments and then called a short-list of candidates to personal interviews with the five Commissioners.¹⁴³ The interviews were conducted from September 18 to September 22.¹⁴⁴ Finally, the SC announced the names of the 51-selected judges on September 26.¹⁴⁵

Besides the timetable, the terms of the application published by the SC reasserted that the final composition of the SJP was going to reflect a balance of genders, regional backgrounds, ethnicities and expertise in Human Rights and International Humanitarian Law.¹⁴⁶ However, the document also stated that the selection process would take into account “international standards of judicial independence as well as the highest ethical qualities of the candidates.”¹⁴⁷

When asked about these particular criteria, *Commissioner Hemingway* explained that the intention of the SC was to be absolutely clear about the standards of selection and that the Peace Accord provided the baseline from which the appointments were to be made.¹⁴⁸ Nevertheless, he did not define what the SC meant by “international standards of judicial independence” or “high ethical qualities.”¹⁴⁹ In his opinion, “the SC was very careful of not using any kind of informal or previously uninformed criteria to make the final selection.”¹⁵⁰ However, *Commissioner Hemingway* explained that internally the Committee had made a decision regarding the type of Court to be appointed.¹⁵¹ He recounted “the SC since the beginning wanted to have a balanced representation between people who have strong expertise in the judiciary, academia and policy. For us, beyond the formal criteria established by the Peace Accord, it was desirable to create an SJP that combined, in a balanced and proportionate way, these three backgrounds. We also wanted to give voice to those who were never heard. In fact, we deliberately wanted to appoint persons that in the ordinary process of appointing judges in Colombia were always barred or excluded due to their lack of political leverage.”¹⁵²

Based on the interviews conducted, the participants in the process seemed to have mixed feelings regarding these last criteria. *Candidate Twain*¹⁵³, an attorney who was not appointed by the SC, explained that she had difficulties describing her experience to the Committee because her professional background overlaps between Academia and work at various Human Rights NGO's.¹⁵⁴ She mentioned “the digital platform was indeed a guarantee of

¹⁴² *Call for Application*, *supra* note 137.

¹⁴³ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁴⁴ *Call for Application*, *supra* note 137.

¹⁴⁵ Atticus Ballesteros, *Colombia Announces Judges who Will Try War Criminals in Peace Tribunal*, *Colom. Rep.* (Sept. 26, 2017), <https://colombiareports.com/colombia-announces-judges-will-try-war-criminals-peace-tribunal/>.

¹⁴⁶ *Call for Application*, *supra* note 137.

¹⁴⁷ *Id.*

¹⁴⁸ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁵³ Skype Interview with *Candidate Twain*, Unselected Candidate in the SJP Selection Process (Jan. 15, 2018) [hereinafter Interview with *Candidate Twain*].

¹⁵⁴ *Id.*

transparency. However, it was designed in a very rigid way. For example, I could not add my part-time academic experience as a lecturer in law with my full-time job as a Human Rights advocate because the system only allowed me to put multiple jobs in the same period of time if the percentage of occupancy equaled 100%. What weight should I have given to my job as a lecturer, that I knew was an important factor for the SC? 10% or 15%? This was very unclear to me during the process.”¹⁵⁵

This problem, that appeared to be a logistical challenge, had strong repercussions in the selection process because of the measures taken by the SC after the submission period ended.¹⁵⁶ After the general call for applications, between July 24 and August 2, the technical staff were in charge of reviewing each online form.¹⁵⁷ In particular, they were responsible for assessing the authenticity and validity of documents the candidates attached to their applications to certify their working experience.¹⁵⁸ During the call for applications, the SC received almost 3,600 applications, so their task was not easy.¹⁵⁹ Someone who arbitrarily picked 10% to represent their part-time lecturing job was given less weight for their academic background than someone with the same job who arbitrarily picked 20%.

With the great number of applications, the technical staff did not have a lot of time to cross-reference the information included by each candidate. Thus, they did not recognize that, in cases like the one described above, the academic experience could be the same between two candidates and the Commissioners would not be aware of the discrepancy.

After the formal vetting process ended, the SC published the CVs of 2076 qualified candidates on August 11.¹⁶⁰ By “qualified”, *Commissioner Hemingway* explained that only those applications that were incomplete or candidates whose working experience could not be properly verified were discarded in the first stage.¹⁶¹ He also explained that, because of the high volume of CVs, the five Commissioners were not able to review all the raw data uploaded by the candidates.¹⁶² To have a comprehensive analysis of all the applications, they asked their staff to prepare a report based on the established criteria of professional background.¹⁶³ Hence, the Commissioners assigned a numerical value to each criterion based on years of experience and their clerks tallied each application score and thus preliminarily ranked the candidates.¹⁶⁴ Next, this information was cross-referenced with the gender, geographic, and ethnic criteria established by the Peace Accord to create a preliminary idea of which candidates should be called for an interview in the second stage of the selection process.¹⁶⁵

¹⁵⁵ *Id.*

¹⁵⁶ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Call for Application*, *supra* note 137.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

The platform was conceived in a way that hoped for a smooth interaction with the SC but some candidates that participated in the process thought that the online application form had a cumbersome design that hindered access to the selection procedure. For example, *Justice Dickens*, a candidate selected for the SJP, explained that the online application was more transparent than the traditional system of appointing judges in Colombia.¹⁶⁶ However, he also stated that the application was comprehensive and that it took him a considerable amount of time to fill the entire form. He also mentioned that he needed assistance from a younger relative, more savvy in technological advancement, to upload all the required information.¹⁶⁷ Although he acknowledged that this could be a problem related to a generational gap in the use of new technologies, he also professed that he knew many candidates who failed to complete their application because of this.¹⁶⁸

This critique is partially shared by younger applicants such as *Justice Poe*, also an appointed member of the SJP. Although he defines himself as a person that has daily interactions with technology, he shared *Justice Dickens'* criticism.¹⁶⁹ In his words, "the paperwork the candidates had to scan and upload was monumental."¹⁷⁰ In particular, he expressed that many candidates he knew—including himself—had a considerable amount of problems with the design of the webpage regarding the information they had to submit relative to their working experience.¹⁷¹ The platform asked that the candidates detail the exact number of hours dedicated to each task submitted in the application and demanded certification of those hours from each employer. This process presented complications regarding part-time jobs—such as being lecturer in a university—because for many candidates it was difficult to obtain job certifications with that particular information.¹⁷²

However, *Justice Poe* also explained that he took proper measures to avoid any last-minute problems with the application. For example, he noted that the system allowed candidates to save their progress, so it was plausible to dedicate a few hours every day to the task without facing any major backlog of work.¹⁷³ He also explained that many of the problems he heard from other candidates were not related to the application form but to a generational unfamiliarity with the use of technology.¹⁷⁴ For example, he explained that one common problem was related to the required conversion of job certifications and diplomas into PDF files. While this is a common task for any younger user of technology, it seemed to be a herculean task for more traditionally trained candidates.¹⁷⁵ For *Commissioner Hemingway*, he thought this was more a problem of time-

¹⁶⁶ Interview with *Justice Dickens*, Judge of the SJP, in Bogotá, Colom. (Dec. 21, 2017) [hereinafter Interview with *Justice Dickens*].

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Interview with *Justice Poe*, Judge of the SJP, in Bogotá, Colom. (Dec. 19, 2017) [hereinafter Interview with *Justice Poe*].

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

management and lack of candidate motivation than anything else.¹⁷⁶ In fact, he highlighted that the platform never went offline, especially on the application deadline, when there was a considerable hike in the use of the online tools by the candidates.¹⁷⁷

The other critique the interviewees had for this stage was more structural and related to a significant problem associated with Internet access in Colombia; there was no possibility of sending hard copies of the application to the SC¹⁷⁸¹⁷⁹. For *Commissioner Hemingway* this decision was necessary to maintain the efficiency of the process.¹⁸⁰ Once an application was submitted online a computer program would extract the relevant data and put it in a spreadsheet for further analysis.¹⁸¹ If the Committee had allowed for candidates to present their applications on paper it would have created a disparity among the applicants. For one, the review process would have taken longer for those attorneys who filed the application on paper. Also, there would be strong obstacles for cross referencing the information with the differential criteria explained above, because the possibilities of omitting proper information while manually extracting the data to the spreadsheet were high. In this sense, *Commissioner Hemingway* explained that the success of the process was highly dependent on the proper systemization and digitalization of the information—achievable only through the online process designed by the SC.¹⁸²

However, this online-only design had to confront a particular obstacle. According to the Colombian Ministry of Information and Technology, as of 2017, only 33% of the households in Colombia have access to a high quality 4G Internet connection.¹⁸³ This average is lower if you examine isolated regions—such as the one where the Massacre of Bojayá occurred—where the coverage of Internet only amounts to 3.7% of the population.¹⁸⁴ This imposed a burden on those candidates who live in rural regions where Internet access is relatively unavailable. *Justice Faulkner*, who was elected as one of the representatives of the minority ethnic communities in the SJP, confirmed this problem.¹⁸⁵ He explained that the online platform was really complicated for African Colombian and indigenous candidates.¹⁸⁶ *Justice Faulkner* described the platform as problematic because he did not have the technical knowledge to, on his own, digitalize and upload all the documents the SC required to certify his academic and professional background.¹⁸⁷ However, he was able to submit an application

¹⁷⁶ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁷⁷ *Id.*

¹⁷⁸ Interview with *Candidate Twain*, *supra* note 153.

¹⁷⁹ Interview with *Justice Dickens*, *supra* note 166.

¹⁸⁰ Interview with *Commissioner Hemingway*, *supra* note 94.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ MINISTERIO DE TECNOLOGIAS DE LA INFORMACION Y LAS COMUNICACIONES, BOLETIN TRIMESTRAL DE LAS TIC: CIFRAS TERCER TRIMESTRE DE 2017 19–22 (2018).

¹⁸⁴ *Id.*

¹⁸⁵ Skype Interview with *Justice Faulkner*, Judge of the SJP (Jan. 13, 2018) [hereinafter Interview with *Justice Faulkner*].

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

with the help of friends who had more technical knowledge and access to a reliable Internet connection.¹⁸⁸

Justice Faulkner recognized that he personally knew many attorneys from minority communities who lived in rural areas that, despite expressing a strong interest in being part of the SJP, did not submit an application because of these complexities.¹⁸⁹ In his words:

Any candidate who wanted to fill the forms and submit the documents in time had to dedicate, at least, 8 days to the process. Most likely, the problem with minorities was worsened by the fact that many candidates waited until the last day to finish the application. Nevertheless, the SC didn't provide any type of technical help. In my case, I tried to contact the Committee by phone and e-mail several times without any success.¹⁹⁰

Conversely, for those candidates who had experience interacting with the traditional judicial nomination system in Colombia, the SJP selection process was a welcome novelty—thanks in particular to the participation of foreign experts in the Commission. *Justice Woolf*, who had a successful career in the Judicial System, complimented the SC's digital system.¹⁹¹ In her opinion:

The SC methods were unprecedented, and they adjusted perfectly to the complexity that comes with the creation of Transitional Justice Special Courts. In particular, the participation of three foreign experts in the decision-making process guaranteed impartiality. This also was reflected in the design of the platform, as the application allowed a wide democratic participation—anyone could apply if he or she could certify the required experience—and a strong scrutiny from the public.¹⁹²

In fact, she concluded that the participation of foreigners should be expanded to the ordinary system for judicial selection in the country.¹⁹³ In her opinion, foreigners had more incentives to act in an independent manner because they were isolated from the Colombian political environment.¹⁹⁴ However, this is an opinion that is not shared by all the judges on the SJP. When asked about the possibility of creating a similar commission for the appointment of all the judges in Colombia, *Justice Dickens* vehemently rejected the idea, saying that “Colombians are capable of selecting their own judges and the success of the SC in this case is explained, in part, by the extraordinary circumstances that

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Interview with *Justice Woolf*, Judge of the SJP, in Bogotá, Colom. (Dec. 22, 2017) [hereinafter Interview with *Justice Woolf*].

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

surrounded this process. In ordinary times this type of model could be seen as an improper interference over our own sovereignty.”¹⁹⁵

Justice Melville, who in the past unsuccessfully participated in a public process to be appointed to one of the country’s highest courts, also had a favorable impression of the SJP selection method.¹⁹⁶ He resented his past experience with the ordinary judicial system. In his opinion:

The process for selecting judges in the traditional courts in Colombia is humiliating. People have to constantly lobby with those responsible for the selection in a patronage system that only awards those with political influence. By contrast, this new process was transparent. Putting aside the fact that I was selected, I am really happy with the result because I am completely independent. I don’t owe my appointment to anyone but to myself and my merits.¹⁹⁷

Justice Wilde, who was on the President’s shortlist to be appointed by the Colombian Senate for the Constitutional Court, shares this feeling.¹⁹⁸ She believes that there are a lot of lessons from this process that should be applied in the country’s judicial service.¹⁹⁹ In her opinion, there was a general sentiment among the applicants that the members of the SC shielded themselves from any outer interference.²⁰⁰ There was a clear distance between the Commissioners and the candidates not only because of the fact that three of them did not live in Colombia but also because all of them, including the ones that live in the country, acted accordingly.²⁰¹ In particular, to identify some of the good practices to be implemented, she highlighted the creation of the online platform and the publicity of the selection criteria as measures that should be incorporated with great urgency in the judiciary.²⁰² Also, she emphasized the importance of the behavior of the Commissioners during the process. For her, the members of the SC kept a clear and impassable distance with all the candidates.²⁰³ In her particular case, she explained that she only met the Commissioners once when she was called to the public hearing where the interviews with the short-listed applicants were conducted.²⁰⁴

The second phase of the process began on August 12 and concluded on August 22, during which any citizen or organization could, through the SC’s

¹⁹⁵ *Id.*

¹⁹⁶ Interview with *Justice Melville*, Judge of the SJP, in Bogotá, Colom. (December 20, 2017) [hereinafter Interview with *Justice Melville*].

¹⁹⁷ *Id.*

¹⁹⁸ Interview with *Justice Wilde*, Judge of the SJP, in Bogotá, Colom. (Dec. 21, 2017) [hereinafter Interview with *Justice Wilde*].

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ This seems to be an important rule of conduct among the Commissioners. For example, when questioned about the possibilities of influences of politicians and other lobby interests in the process, Commissioner Álvaro Gil-Robles replied that, as one of the three foreign members of the SC, “it is very simple, when we are 8,000 km away from Colombia, the lobby do not reaches our shores.” Martínez Hernández, *supra* note 108 (translated from Spanish by the author).

²⁰⁴ Interview with *Justice Wilde*, *supra* note 198.

online platform, send comments regarding any of the 2076 preliminary candidates.²⁰⁵ According to the rules of the process articulated by the members of the SC, there were two mandatory rules during this phase. First, every commentator—without exception—had to identify himself with his full name and ID.²⁰⁶ Second, only the members of the SC and their staff were authorized to access the information included in the comments.²⁰⁷

For *Commissioner Hemingway* these rules had two purposes. First, prohibiting anonymity was a measure designed to guarantee seriousness and rigorousness in the comments posted about any candidate.²⁰⁸ For the SC, it was clear that in the extremely polarized context that surrounded the Colombian Peace Process—after all, the Agreement was initially rejected by a very thin margin in a Plebiscite conducted on October 2, 2016—it was necessary to require people to assume responsibility for their own comments. In this sense, anonymity was seen by the SC as a “gate by which the political debate would permeate the selection process.”²⁰⁹

Second, the SC took strong measures to guarantee the safety of the information sent by citizens.²¹⁰ They invested heavily—using the Foreign Aid funds granted by the United Nations—in the protection of the digital platform where the comments were deposited.²¹¹ Only through a personal and traceable password were the administrative staff of the SC able to access the information and there were clear rules that prohibited any kind of data sharing with the candidates.²¹² For *Commissioner Hemingway*, this was part of the SC’s success.²¹³ The careful handling of the information allowed the commissioners to examine each CV in detail, and the security of the online platform provided confidence to those citizens and organizations that were interested in the process. As an example of this, *Commissioner Hemingway* revealed that the system was attacked by hackers who were in pursuit of the information contained in the comments sent by the public.²¹⁴ However, the security countermeasures designed and installed were effective—guaranteeing the security of the data.²¹⁵

According to the final report published by the SC, 16,945 comments were received.²¹⁶ The Selection Committee then proceeded to analyze the information. *Commissioner Hemingway* seems to have contradictory feelings about the results. On one hand, he thinks that the high number of opinions strengthened the selection process, as it demonstrated strong civic

²⁰⁵ See *Call for Application*, *supra* note 137.

²⁰⁶ Interview with *Commissioner Hemingway*, *supra* note 94.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² During the interviews conducted with five appointed judges and two candidates to the SJP, they unanimously confirmed that they did not have access to any information regarding the public comments referring to their candidacy. However, this was a source of criticism for the SC, as will be described in the following section of this chapter.

²¹³ Interview with *Commissioner Hemingway*, *supra* note 94.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Final Report on the Work of the Selection Committee*, COMITÉ DE ESCOGENCIA (last accessed Mar. 9, 2018), <http://www.comitedeescogencia.com/> (hereinafter *Final Report*).

participation.²¹⁷ On the other hand, he lamented that many candidates thought that this part of the process was a popularity contest and that—through social networks and even direct appeal campaigns—several candidates asked people to support the application as a way to influence the decision of the SC.²¹⁸ For the Commissioner, this interpretation completely misunderstood the logic of the process and only created a backlog of work for the administrative staff of the SC.²¹⁹ He believed that the role of the public debate around the CVs of the applicants should have focused on serious ethical or professional claims against these candidates rather than which one of them was more popular.²²⁰

Candidate Twain admitted that he asked for support for his candidacy through his social networks.²²¹ He recalls that he contacted several Human Rights organizations and friends to send comments to the online platform underpinning his professional experience and capacity in the field of Transitional Justice.²²² It is unclear whether this sort of conduct had a negative impact on the final decision of the SC or if the Commissioners red flagged this type of activity. What it is clear, is that the SC heavily considered the comments that seriously questioned the ethical conduct of the candidate. An example of this is the case of Mr. Francisco Ricaurte. Mr. Ricaurte, a highly controversial former justice of the Colombian Supreme Court, applied for a place on the SJP. During his tenure as a judge, Mr. Ricaurte was accused in the media of nepotism and corruption.²²³ Although at the moment of the selection he did not have any criminal or disciplinary record, his presence in the process was strongly criticized and many organizations and citizens were publically against his nomination.²²⁴ Because of the processes' anonymity, it was not possible to determine how many comments the SC received regarding Mr. Ricaurte's character. What is clear is that this candidate did not make the short-list for the personal interviews. In the end, it turns out that the SC was right to take proper precautions in this case. In September 2017, he was preventively sent to prison by a judge—similar to being held without bail during trial in the United States—for allegedly receiving bribes as a justice in exchange for deciding cases in certain ways.²²⁵

According to the timetable designed by the SC, the next step involved a personal interview with a short list of 78 candidates.²²⁶ According to *Commissioner Hemingway*, the selection of this short list was the result of a

²¹⁷ Interview with *Commissioner Hemingway*, *supra* note 94.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Interview with *Candidate Twain*, *supra* note 153.

²²² *Id.*

²²³ Adriaan Alsema, *Colombia's Former Supreme Court Chief Justice Arrested on Corruption Charges*, *Colom. Rep.* (Sept. 20, 2017), <https://colombiareports.com/colombias-former-supreme-court-chief-justice-arrested-corruption-charges/>.

²²⁴ In this particular case the media played an important role. All the main media organizations in the country published articles against Mr. Ricaurte's application. The publications shared their consternation regarding the possibility of his elections and the implicit risk in appointing him as a judge in the SJP.

²²⁵ Tristan Clavel, *Colombia Judicial Corruption Scandal Expands with Fmr [sic] Top Judge's Arrest*, *INSIGHT CRIME* (Sept. 21, 2017), <https://www.insightcrime.org/news/brief/colombia-judicial-corruption-scandal-expands-fmr-top-judge-arrest/>.

²²⁶ *Final Report*, *supra* note 216.

careful evaluation of the data obtained from every application.²²⁷ Because all the information was uploaded online to the digital platform, transferring the data of every candidate to a quantitative tool—such as Excel—was relatively easy.²²⁸ In this way, the SC was able to classify the candidates based on each of the formal category of selection (gender, ethnic origin and region) and their professional experience.²²⁹ *Commissioner Hemingway* explained that:

[c]andidates were separated in individual spreadsheets by their type of experience. Further, they were then ranked using formal categories. For example, we grouped candidates by type of experience (judicial system, public sector, academia) and then ranked them based on their gender, ethnicity or regional origin. Those candidates who certify different type of experience were included in all the spreadsheets and were then compared with the other members of their subgroup.²³⁰

Commissioner Hemingway explained that this system greatly facilitated selecting the candidates that were going to be called for interviews.²³¹ This is so, because it was easy to identify candidates that were in the upper tier of every spreadsheet. Also, this information was shared with every member of the SC and they, based on the data, elaborated their own short list.²³² However, it is not clear how the public comments were factored into the final tabulation and the similarity between the actual short-list that was published on September 18, 2017, and the rank set up in the spreadsheet. In fact, this was a contentious issue according to the interviews. For example, *Candidate Twain* thought the criteria for elaborating the short-list was not clear.²³³ To him “the experience of the candidates in domestic law was overshadowed in the analysis made by the Commissioners. Although I have had considerable experience in many national debates about the protection of victims, it seems to me that the SC preferred candidates who had more international know-how. For example, they preferred candidates who had experience in the Inter-American Court of Human Rights above those of us who had more qualifications in national law.”²³⁴ He also mentioned that in the terms of the application, there was no mention of the number of candidates that were going to be short-listed. In his opinion, this promoted wider discretion among the members of the SC and contrasted with their desire of transparency and consistency.²³⁵

In contrast, for *Commissioner Hemingway* the possible biases each member could have had at the moment of elaborating their own list were reduced by one specific circumstance.²³⁶ The first one is related to a benchmark set by the SC

²²⁷ Interview with *Commissioner Hemingway*, *supra* note 94.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ Interview with *Candidate Twain*, *supra* note 153.

²³⁵ *Id.*

²³⁶ Interview with *Commissioner Hemingway*, *supra* note 94.

regarding the votes necessary to for a candidate to be placed on the short-list. They agreed that each candidate should have, at least, four out of five votes to be included in the next part of the process.²³⁷ This promoted a consensus based-approach inside the SC that guaranteed the reduced impact of any individual interest or agenda.²³⁸

Commissioner Hemingway illustrates this with an example. After the results were tabulated, each Commissioner received the information and worked individually for two weeks on the analysis of the data. After that, they personally met in a full-day private session where they discussed their findings. He explained that the Commissioners were able to identify three groups among the candidates: an upper tier group of candidates that clearly exceeded over the rest, a lower tier group that were in the bottom positions among the 2000 candidates and a middle group that—without being part of the upper tier group—had strong credentials and expertise and could be considered for the positions.²³⁹ In the case of the first group, the Commissioner explained that there were strong coincidences among the short-list each member of the SC created.²⁴⁰ Also, without exception, none of the Commissioners included in their final draft an applicant that was part of the lower tier candidate pool.²⁴¹ Regarding the third group, the majority rule of the SC served as a safeguard against any particular bias. *Commissioner Hemingway* explained that there were few discrepancies among the members in this stage of the process and that “when you have five sets of eyes reviewing the information it is very easy to reach to decisions regarding the short-list.”²⁴² Regarding the number of short-listed candidates, the Commissioner explained that the initial goal “was to have at least two candidates per position. Taking into account that there were 51 spots available we had reason to call for interviews, at most, 102 candidates. This was because we were basically constrained by time.”²⁴³

It is important to highlight that the answer given by *Commissioner Hemingway* about the number of short-listed candidates does not explain the decision to only call 78 applicants to the interview process. Time was indeed a factor that constrained the capacity of action of the SC, especially taking into account that the majority of the SC’s members did not live in Colombia. This suggests that the decisions regarding the names of the interviewees was highly discretionary. It is also true that the names were picked after the list of candidates was divided using the formal criteria included in the Peace Accord and the Constitution. However, the data collected, as showed in the next chapter, does not explain, nor deny, that the selections were made only using the names of candidates that were in the upper tier of the list. Indeed, this choice remains an open question.

For his part, *Justice Faulkner* recognized the transparency of the process. However, he did not agree with the SC’s decision not to disclose the public

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

comments they received.²⁴⁴ In his opinion, the rules set by the Commissioners regarding access to this information and the publicity of their methods were inexplicably omitted in this part of the process.²⁴⁵ However, he thought the more contentious issue was related to the organization of the interview process. In his case, he explained that he was notified by a clerk of the SC that he was included on the short list on a Sunday night and at that moment he was informed that the interview was going to be conducted in Bogotá, the capital of Colombia, that Wednesday.²⁴⁶ *Justice Faulkner*, as one of the candidates that represented an ethnic minority in the process, lived outside the city and organizing the trip on such short notice was a financial burden.²⁴⁷ When asked about the decision of the SC to hold the interviews in Bogotá, *Commissioner Hemingway* explained that this was done because three of the commissioners were foreigners and they could only remain in the country during a short period of time due to their professional commitments.²⁴⁸

Other candidates seemed to have a less contentious experience with this process. For example, *Justice Wilde* described the interview as fair and balanced.²⁴⁹ In particular, she said that she “was surprised that the questions asked by the Commissioners, without exception, were difficult and profound. I felt like I was in a very serious exam and I was pleased that the format of the interviews was flexible, so I was able to establish a rich dialogue with each member of the SC.”²⁵⁰ In fact, the only criticism she had was that the interviews were not transmitted live but recorded and then posted on the webpage of the SC. For her, it was more desirable to broadcast all the interviews to improve transparency.²⁵¹ *Justice Woolf* had a similar criticism. Taking into account her experience regarding the traditional system for appointing judges in Colombia, she considered that the interviews were one of the true contributions of the SJP selection process. For her, “this type of interviews should be replicated and expanded throughout the judicial system.”²⁵²

During this process, the political opposition to the Peace Agreement stated that the Commission acted in a biased, unfair and unbalanced manner. This objection was explained by *Mrs. Hamlet*, a right-wing political leader who was part of the team that renegotiated the terms of the Peace Agreement with the government after the results of the Plebiscite that rejected the original deal. She described the SJP as a “conglomeration of left-wing parties and human rights organizations”²⁵³ that constantly and publicly accused the main leader of the opposition, former President Alvaro Uribe Velez, of committing war crimes during his presidency.²⁵⁴

²⁴⁴ Interview with *Justice Faulkner*, *supra* note 198.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Interview with *Commissioner Hemingway*, *supra* note 94.

²⁴⁹ Interview with *Justice Wilde*, *supra* note 198.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Interview with *Mrs. Hamlet*, Member of the Opposition Renegotiation Team, in Bogotá, Colom. (Dec. 19, 2017) [hereinafter Interview with *Mrs. Hamlet*].

To support her claim, *Mrs. Hamlet* stated that the majority of the members of the newly created SJP came from academia or the human rights activist community,²⁵⁵ sectors that have traditionally been accused of sympathizing with the Guerrillas.²⁵⁶ Furthermore, this argument has been incorporated into the official narrative of the Colombian Armed Forces²⁵⁷, who argue that the new SJP will disfavor state agents and right-wing politicians and will disregard the crimes committed by the guerrillas. Under this premise, the opposition has tried to undermine the social legitimacy of the Tribunal, denouncing the process as rigged since its conception, and arguing that the SJP lacks the validity to determine criminal responsibility for acts committed during a conflict.²⁵⁸ *Mrs. Horatio*, a conservative academic who was part of the team of advisors of the opposition during the renegotiation process of the Accords, goes further in her critic to the SC. In her opinion, “the Selection Committee totally lacks legitimacy because Colombians rejected the Peace Agreement by popular vote.”²⁵⁹

For the opposition, participating in the selection process was not an option because it would have been seen as an endorsement of the peace process as a whole. For example, *Mrs. Horatio*, who is part of the faculty of a conservative law school in the country, explained that she knew that other schools reached out to their alumni, inviting them to participate in the process.²⁶⁰ However, her law school abstained because “we did not perceive any guarantee of independence in the process because the profiles of the commissioners were clearly closer to those who supported the Peace Agreement.”²⁶¹ As an example of this, *Mrs. Hamlet* added that the opposition was never informed that the SC planned to receive and review information from the public regarding the applicants and that is why they did not participate in the process of reviewing the CVs of the candidates.²⁶²

Even the presence of judges with a military background did not seem to guarantee independence for the opposition. *Mrs. Hamlet* dismissed that argument because the presence of judges with a military background in the SJP is minimal.²⁶³ She highlighted the fact that of the 38 permanent judges of the Tribunal only two came from the military showing that their impact would be,

²⁵⁵ *Id.*

²⁵⁶ Nick Miroff, *Here Are the Details—Critics Would Say the Devils—In Colombia’s Peace Deal with FARC*, WASH. POST (Aug. 24, 2016), https://www.washingtonpost.com/news/worldviews/wp/2016/08/24/here-are-the-details-critics-would-say-the-devils-in-colombias-peace-deal-with-farc/?utm_term=.26aace40918a.

²⁵⁷ On December 12, 2017 the Army’s Chief of Staff, General Alberto Mejía, stated in an interview with Caracol Noticias (one of the principal TV broadcasters in the country) that “we [in the Military Forces] have deep uncertainties regarding some of the justices of the Peace Tribunal because of their background. We in the military think that the Tribunal should faithfully represent the classical image of justice, that is to say balanced, unbiased, and not committed to a particular political agenda.” “*Tenemos Incertidumbres Sobre Algunos Magistrados de la JEP*”: *General Mejía*, NOTICIAS CARACOL (Dec. 12, 2017), <https://noticias.caracol.com/colombia/tenemos-incertidumbres-sobre-algunos-magistrados-de-la-jep-general-mejia> (translated from Spanish by the author).

²⁵⁸ Interview with *Mrs. Hamlet*, *supra* note 254.

²⁵⁹ Interview with *Mrs. Horatio*, Adviser to the Opposition Renegotiation Team, in Bogotá, Colom. (Dec. 26, 2017) [hereinafter Interview with *Mrs. Horatio*].

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

even in the best-case scenario, residual.²⁶⁴ Also, when confronted with the fact that many soldiers and officials already presented a formal petition to the SJP to receive the benefits included in the Peace Agreement²⁶⁵, *Mrs. Horatio* contested that this situation is explained by the fact that the military wanted to receive the same benign treatment conceded by the government to FARC members. She continued by claiming that this was an unfair situation because members of the military should be judged by a completely different standard; one that recognizes its efforts and sacrifices confronting the guerillas for many years.²⁶⁶

For both interviewees, the problems related to the SJP were associated with its conception as a totally new Tribunal that would work in tandem with the ordinary courts. They claimed this creates a considerable risk of overlap that, in the long-run, would create obstacles for properly reviewing and judging the crimes committed by the guerilla—a situation that would inevitably bring impunity.²⁶⁷ As a solution, *Mrs. Horatio* opined that the best model for implementing the Peace Agreement was already established—the existing Peace and Justice System²⁶⁸ created during former President Alvaro Uribe's tenure. This system was implemented after a peace negotiation held between Mr. Uribe's government and the United Self-Defense Force of Colombia (AUC) a confederation of paramilitaries that were created in the 80's by Colombia's rural elites to combat the expansion of the FARC.²⁶⁹ Under this system, special chambers were created inside the ordinary criminal system to prosecute the crimes committed by members of the AUC, under the condition that they confessed their crimes and supported the reparation of their victims.²⁷⁰

Mrs. Hamlet supported this idea, expressing that these chambers, created in 2005 and still working in some parts of the country, already had the knowledge, manpower and experience to handle the difficult task that comes with Transitional Justice.²⁷¹ Also, from her viewpoint, all the members of the Armed Forces that are going to be investigated as perpetrators of crimes during the conflict should be tried by the military justice system and not the SJP.²⁷² For her, this is the appropriate forum because she thinks that only those who have served

²⁶⁴ *Id.*

²⁶⁵ As of March 2018, a total of 6,445 petitions were submitted to the SJP by members of the FARC and the military. JEP, ACTAS SUCRITAS (2018), <https://www.jep.gov.co/Infografias/jep%20en%20cifras.pdf> (demonstrating the number of petitions received by the SJP as of March 15, 2018). Of that total, 1,792 were submitted by the military, which represented around 27 percent of the total request. *Id.* Furthermore, the SJP has already granted provisional benefits (such as the reduction of criminal punishment or transitory liberty) to 909 members of the Colombian armed forces. *Id.*

²⁶⁶ Interview with *Mrs. Horatio*, *supra* note 259.

²⁶⁷ See Interview with *Mrs. Hamlet*, *supra* note 254; see also Interview with *Mrs. Horatio*, *supra* note 259.

²⁶⁸ The results of the Peace and Justice System have been highly contested. For example, according to Dejusticia, a Colombia-based human rights research and advocacy organization, the conceived design was flawed because it concentrated the action of the State in the criminal prosecution of the perpetrators without giving the proper tools to judges for the reconstruction of truth. Rodrigo Uprimny Yepes & María Paula Saffon Sanín et al., *Derecho a la Verdad: Alcances y Límites de la Verdad Judicial*, in ¿JUSTICIA TRANSICIONAL SIN TRANSICIÓN? VERDAD, JUSTICIA Y REPARACIÓN EN COLOMBIA 139–146 (2006).

²⁶⁹ Deborah Sontag, *The Secret History of Colombia's Paramilitaries and the U.S. War on Drugs*, N.Y. TIMES (Sept. 10, 2016), <https://www.nytimes.com/2016/09/11/world/americas/colombia-cocaine-human-rights.html>.

²⁷⁰ Interview with *Mrs. Horatio*, *supra* note 259.

²⁷¹ Interview with *Mrs. Hamlet*, *supra* note 254.

²⁷² *Id.*

and been in combat could understand the difficulties and dilemmas that a combatant has to confront during war.²⁷³

Regarding the members of the SC, both *Mrs. Hamlet* and *Mrs. Horatio* noted that they did not have any doubt regarding their ethical or professional standing. However, they questioned their independence. To *Mrs. Hamlet*, the members of the Committee, especially the foreigners, develop their careers as human rights activists before joining the SC. She thinks this background clearly compromises their judgment and makes them bias lawyers that share their ideologies.²⁷⁴ *Mrs. Horatio* had a very similar opinion, but she added that the problem was that the parties assumed because the commission had foreign members, that it was independent. For her, this was a “very typical Colombian perspective that has no support from hard evidence.”²⁷⁵ She concluded then, that in reality there was no control over the actions of the SC, so it was impossible to verify its independence.²⁷⁶

When asked about her opinion on the matter, *Justice Woolf* responded that it is normal and desirable that the members of a Transitional Justice Court have strong experience in Human Rights.²⁷⁷ In his words, “you could not think that it is plausible or appropriate to appoint experts in tax law to judge the perpetrators of the worst crimes committed during a civil conflict.”²⁷⁸ *Justice Wilde* shares this feeling as she explained that, unfortunately, one of the many unintended consequences of the Colombian conflict has been the demonization of human rights activism because it has been unjustifiably related to a left-wing agenda sympathetic with the guerrillas.²⁷⁹ Advocacy has, in this sense, also been a victim of Colombia’s war.

With regard to the SC, their members have publicly defended the process, stating that they acted according to the explicit terms of the Peace Agreement and the formal selection criteria outlined therein and explained above.²⁸⁰ When confronted with these critiques, *Commissioner Hemingway* reiterated that the SC developed, with the assistance of the UNDP, an algorithm in order to quantify the characteristics of each candidate and establish a numerical result that reflected their overall qualification according to the criteria outlined in the Peace Agreement and the Constitution.²⁸¹ The idea behind this mechanism was to reduce, to the furthest extent possible, the personal biases of each

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Interview with *Mrs. Horatio*, *supra* note 259.

²⁷⁶ *Id.*

²⁷⁷ Interview with *Justice Woolf*, *supra* note 254.

²⁷⁸ *Id.*

²⁷⁹ Interview with *Justice Wilde*, *supra* note 198.

²⁸⁰ For example, after the appointments in the SJP were announced, Claudia Vaca, the Chairman of the SC, in an interview with a Colombian newspaper defended the selection of the candidates. She stated that, “the diversity of the Tribunal should be a matter of celebration. The members of the SC did not seek to suppress any debate or discussion during the selection process. In fact, we published the CVs of all the candidates, the interviews with the short-listed applicants and we opened a space to receive observations from any citizen. The Committee took great care to consider any relevant objections against any candidates—that is any information that could be properly verified regarding any ethical or legal objection of any one of the applicants—and we understand that the debate regarding our selection does not end with our decision.” Interview by Cecilia Orozco Tascón with Claudia Vada, in *El Espectador* Newspaper (last accessed May 28, 2018) (translated from Spanish by the author).

²⁸¹ Interview with *Commissioner Hemingway*, *supra* note 94.

Commissioner. For *Commissioner Hemingway*, this algorithm allowed the SC to make informed decisions, taking into account that they had to review all the applications without any prejudice.²⁸² Also, he explained that the SC directly approached the Armed Forces, and in meetings with the Office of the Army's Chief of Staff and with other high-ranking officers they directly invited them to participate in the process.²⁸³ He explained that, under the SC perception, the military members were eager to contribute to the process. Further, he believed that they were pivotal for its success because they could contribute their combat experience and apply International Humanitarian Law to analyze the cases that the SJP must review.²⁸⁴

Regarding the final decision of the 51 judges of the SJP, *Commissioner Hemingway* explained that the interviews were fundamental, but they supplemented the results of the data analysis collected during the process.²⁸⁵ He explained that "although each Commissioner could have his own ideal candidate for the SJP before this stage, the truth of the matter was that after the interviews, the selection was relatively easy because we, in general, saw that those candidates who stood out in their application also stood out in the interview."²⁸⁶ Surprisingly, with the exception of *Mrs. Horatio* and *Mrs. Hamlet*²⁸⁷, the other interviewees did not express any concern or doubt about the final selection. However, it is important to recognize that the sample of interviewees only included one candidate who was not selected—who also did not express any particular objection to the final selection—so the results of the qualitative analysis in this part of the process relies heavily on those applicants who were finally selected and that, probably, did not hold any doubt or resentment towards the SC for its decision.

The interviews among the stakeholders that participated in the selection process allow us to draw some preliminary conclusions regarding the selection process. First, the use of big data was relevant for the Commissioners. The online platform that received all the applications was conceived to trace and process all the information in a way that allowed each Commissioner to separate each applicant based on their gender, regional and ethnic criteria. However, the process was not perfect. In particular, it seems that the SC did not anticipate the obstacles to uploading information on the platform combined with the limited access to Internet in marginal regions of Colombia. In other respects, the process for short-listing the candidates seems murky to some of the stakeholders involved in the process while for others the criteria applied by the Commissioners were clear and consistent. In general, the participants in the process had a very positive view of the process with respect to its transparency and independence. Nevertheless, the opposition to the Peace Agreement, held that the process was broken since its conception. For these sectors, the participation of foreigners with a particular agenda of Human Rights jeopardized

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ Interview with *Commissioner Hemingway*, *supra* note 94.

²⁸⁷ In both of their interviews, they insisted heavily on the fact that the final composition of the SJP only reflected one side of the conflict.

the selection of the SJP. Also, the final composition of the Tribunal confirmed the biases of the process.

Through the qualitative study just presented, a general impression of the selection process could be formed. The next section includes a quantitative analysis which uses the raw data gathered by the SC to determine if there were any inconsistencies or biases in the judicial selection process.

III. THE DATA

Statistics can be inconsistent.²⁸⁸ Although statistics are everywhere, they often suffer from—particularly in the Colombian judiciary—a reputation of being uninteresting and inaccessible. However, one of the novelties in the process designed by the SC is that the data of each of the candidates was publicly available through the Committee webpage. In fact, one of *Commissioner Hemingway's* assistants provided the raw data of the 2076 candidates that applied for a position in the SJP. Hence, it was possible to create a code-book with 69 variables²⁸⁹ that allowed for the running of a series of correlations, based on the gender, ethnographic or regional origin of the candidates. This was done to detect how the Commissioners applied the selection criteria in reality. All this was conducted, under the hypothesis that the representation from each of these demographic sectors would be higher among those chosen for the Tribunal than compared with the entire candidate pool.

For example, hypothetically, if the majority of the 2076 candidates were men from large cities, but they were underrepresented in the final selection, it is possible that the Committee effectively applied a selection bias in favor of women, as the Peace Accord instructed. The same could be determined, for example, for attorneys with military backgrounds or those who, because of their human rights experience, were labeled by the political opposition as not independent. Hence, in the following pages, a descriptive, quantitative correlation among the three set groups (i.e., gender, ethnicity, and regional origin) is presented.

The first area of analysis is related to the gender of the candidates. Figures 1.1 and 1.2 show a simple correlation based on the gender distribution of the 2076 candidates compared with the final distribution in the 51 appointed judges.

²⁸⁸ CHARLES J. WHEELAN, *NAKED STATISTICS: STRIPPING THE DREAD FROM THE DATA* 9–13 (2013).

²⁸⁹ Harvey Suárez, the Administrative Secretary of the Selection Committee, generously provide the Author with the raw data of all the information related to the applications submitted to the SC. With that data, and with the help of the programming language R, the Author built a multivariable model on an Excel Spreadsheet. All the results presented in this chapter are the result of the different variables the Author contrasted using the self-made model. Appendix A presents the list and characteristic of each of the analyze variables.

FIGURE 1.1: GENDER DISTRIBUTION (TOTAL)

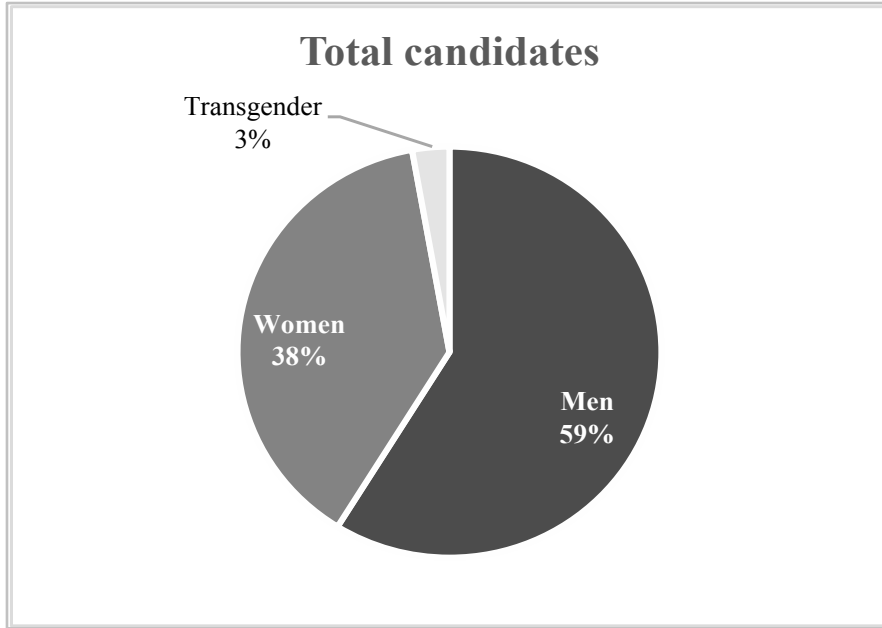
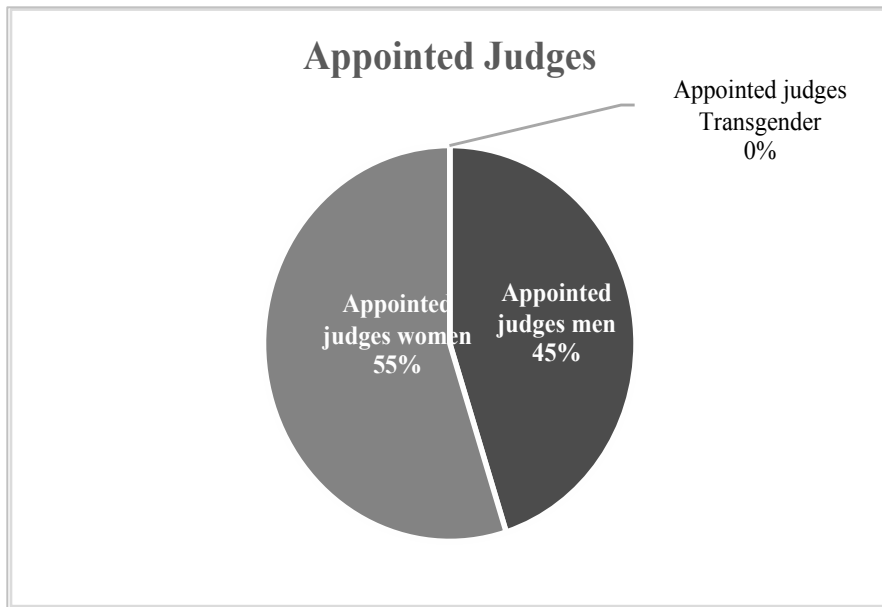


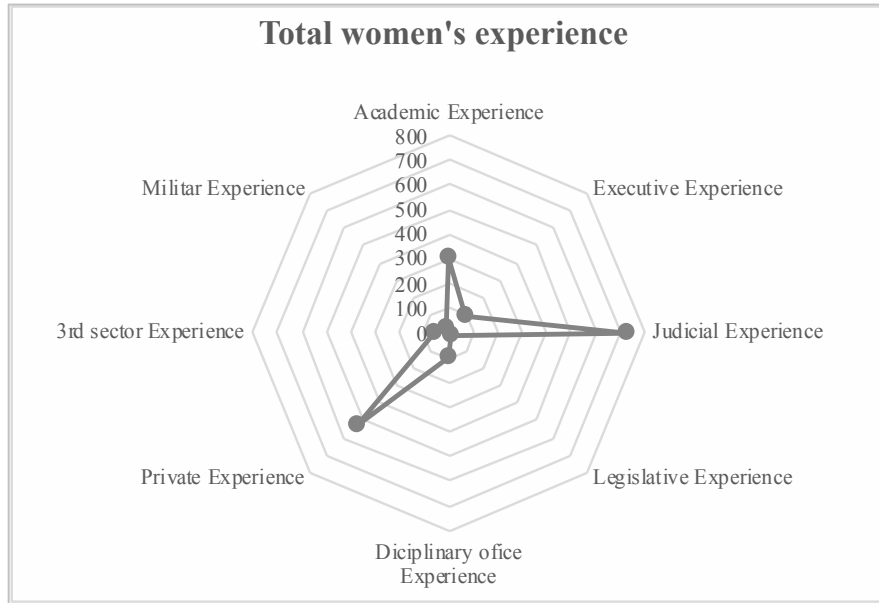
FIGURE 1.2: GENDER DISTRIBUTION (APPOINTED)



Preliminarily, the results in these figures suggest that the Committee had a strong preference for women. While women only composed 38% of the universe

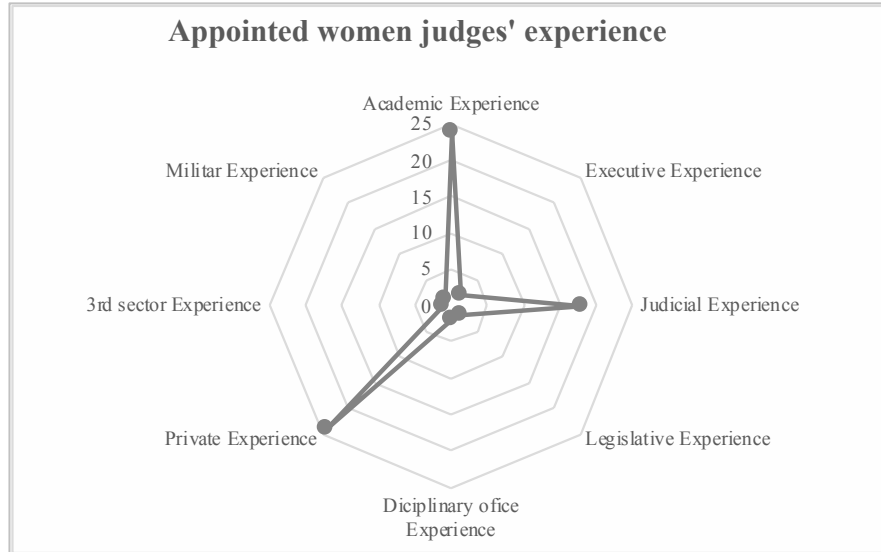
of candidates, they made up a majority of the Tribunal (55%).²⁹⁰ A simple correlation between the percentage would say that the representation of women grew in a rate approximately 1.5. Now, when the correlation regarding women includes a variable for professional background, based on the last job candidates had before applying to the SJP, some interesting results are found.

FIGURE 2.1: WOMEN'S PROFESSIONAL BACKGROUND (TOTAL)



²⁹⁰ SJP, Data Set of All Candidates [hereinafter Data Set].

FIGURE 2.2: WOMEN'S PROFESSIONAL BACKGROUND (APPOINTED)



When cross-referencing the variable of gender with other variables, interesting findings appear. For example, these charts show that, while the majority of the women candidates had a background in the judiciary, the SC had a strong tendency to choose female applicants with experience in Academia and in the Private Sector (law firms). This shows that the SC totally disregarded candidates with policymaking backgrounds (as defined as experience in the Public Sector holding administrative or executive authority).²⁹¹

When the information is cross-referenced with men, the result is similar. Figures 3.1 and 3.2 demonstrate that, in the case of male judges, the SC gave more weight to executive expertise as compared to women. Also, proportionally, the judicial experience did not play a very important factor in the selection as compared to expertise in the private sector and in academia. However, it is important to clarify that the correlation does not measure how multiple experiences in different sectors was measured by the SC. These charts help illustrate a tendency that could be considered an informal criterion applied by the Commissioners—understood as a preference for lawyers that have recent academic and practical experience—but it is not clear how much weight, if any, each background was given in the specific cases of candidates that worked in different sectors.²⁹²

²⁹¹ *Id.*

²⁹² *Id.*

FIGURE 3.1: MEN’S PROFESSIONAL BACKGROUND (TOTAL)

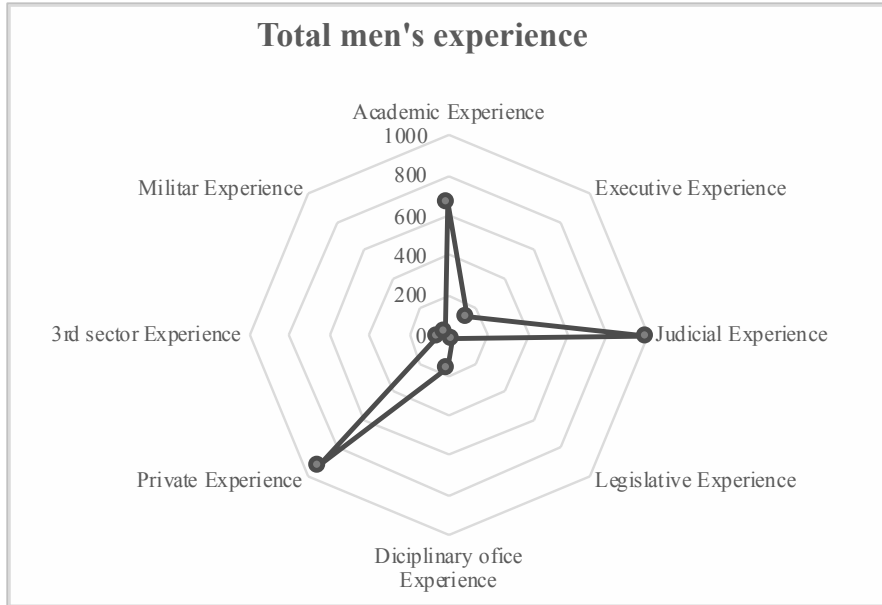
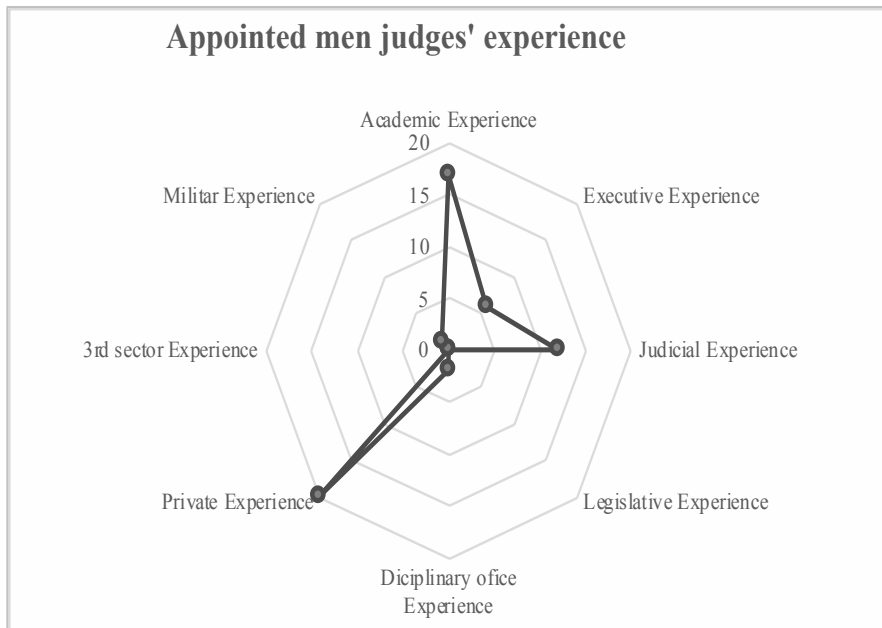


FIGURE 3.2: MEN’S PROFESSIONAL BACKGROUND (APPOINTED)



Comparing the data set using the independent variables of age and gender reveals that the SC tended to choose younger women and older men. The SC decided to give an opportunity to younger female lawyers between the ages of 40 and 49, but chose older men, between the ages of 50 and 59. This could show that the SC took into account that the professional development of women is

particularly harder, thanks to systematic discrimination and harsher work environments (related to maternity for example).

FIGURE 4.1: DISTRIBUTION OF CANDIDATES BY AGE (TOTAL)

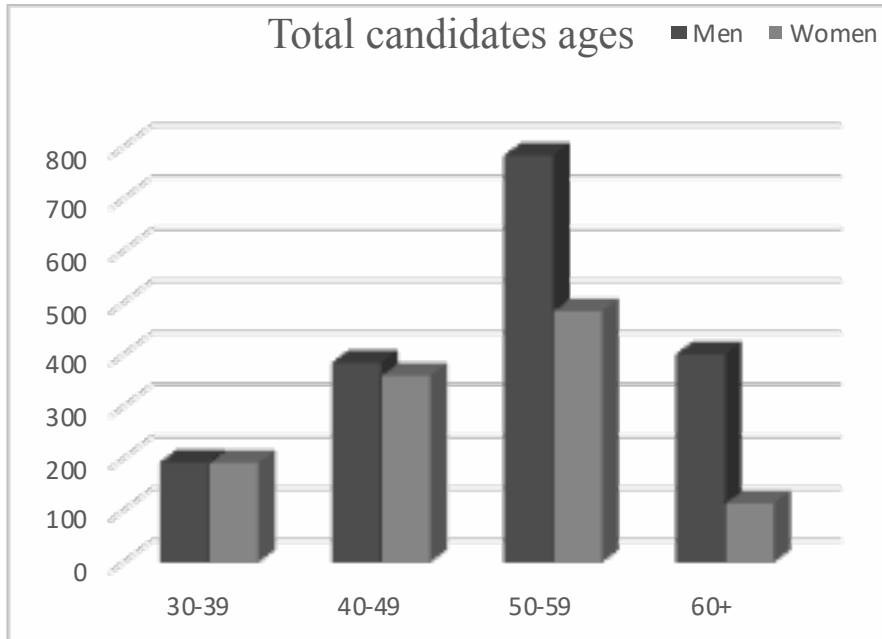
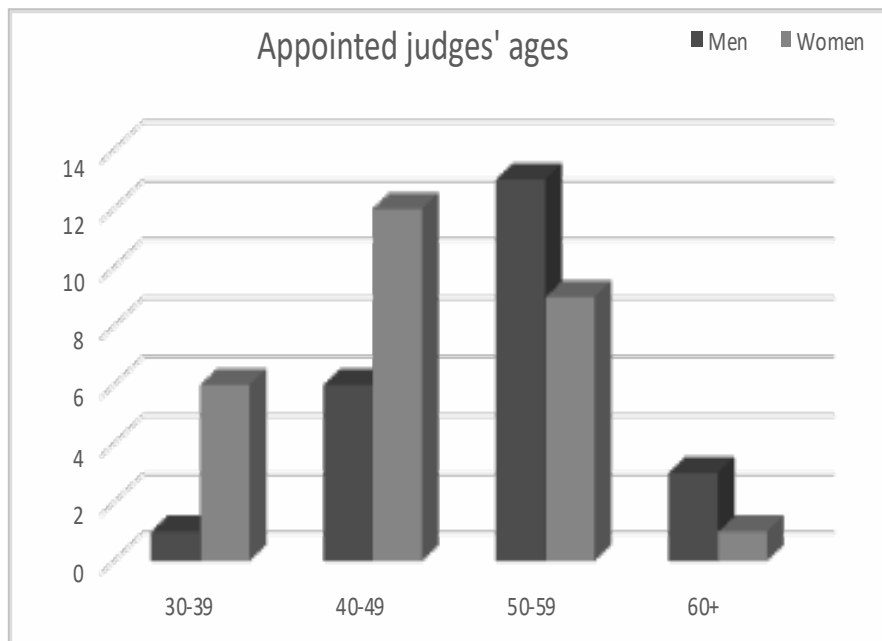


FIGURE 4.2: DISTRIBUTION OF CANDIDATES BY AGE (APPOINTED)



However, the results could also have a negative interpretation. The charts suggest that, proportionally, the distribution of age maintained a certain equilibrium. However, for both men and women, there is a particular drop for lawyers that are above 60 years old. These results could eventually show that ageism was an issue in the selection process. Younger candidates, especially between the ages of 40 and 58, were preferred over more experienced lawyers.²⁹³ However, this could also be explained by the fact the SJP, based on the Peace Accord and the Constitutional Amendment that created it, has a 20-year mandate. That could be why the SC looked for a certain balance of ages that could improve the likelihood that the appointed judges would fulfill their whole tenure.

The previous analysis seems to be confirmed when the data set is cross referenced using the independent variable of years of work experience. While the majority of women appointed to the court are part of the first quartile of experience (10 to 15 years of experience), men are evenly distributed along all the quartiles.²⁹⁴ These results also suggest informal criteria were applied by the Commissioners. For the first chambers of the SJP, which required at least ten years of experience, the SC preferred women.²⁹⁵ For the second chambers, which required at least 15 years of experience, the SC preferred men.²⁹⁶ This is confirmed with the final distribution of gender. For the first chambers there are 11 women and 7 men, while for the second chambers the proportion is 9 women and 11 men.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

FIGURE 5.1: DISTRIBUTION OF MEN BY YEARS OF EXPERIENCE (TOTAL)

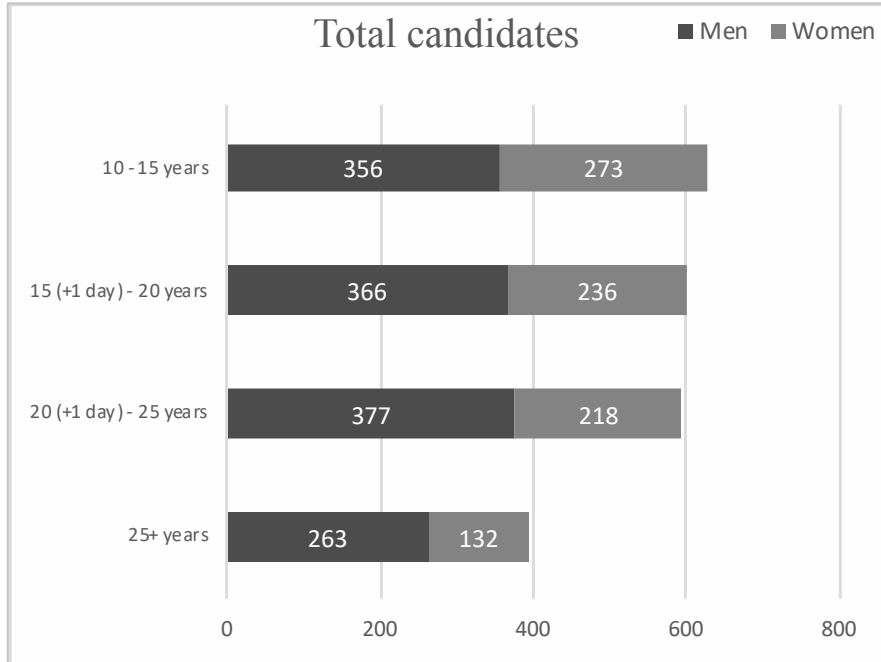
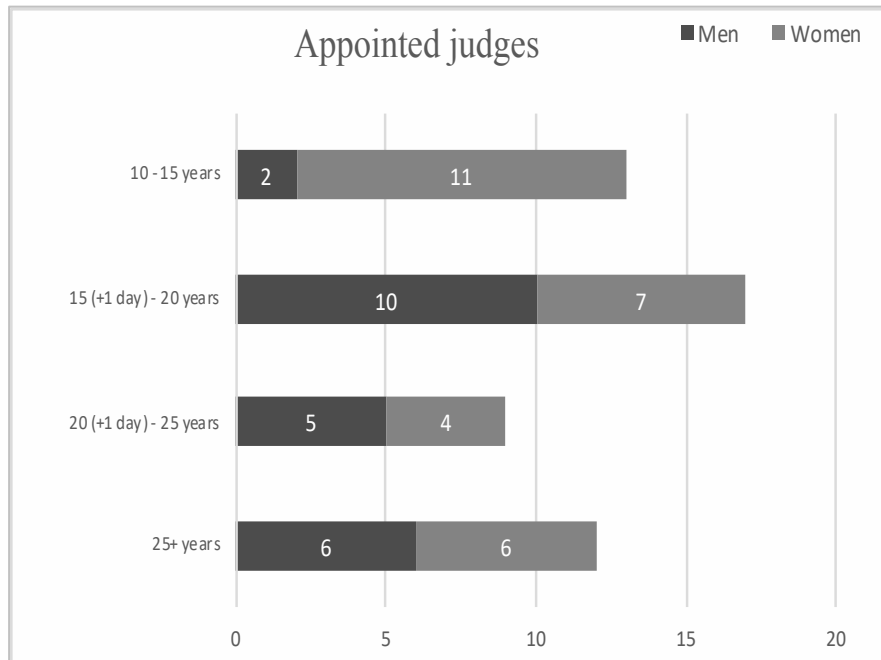
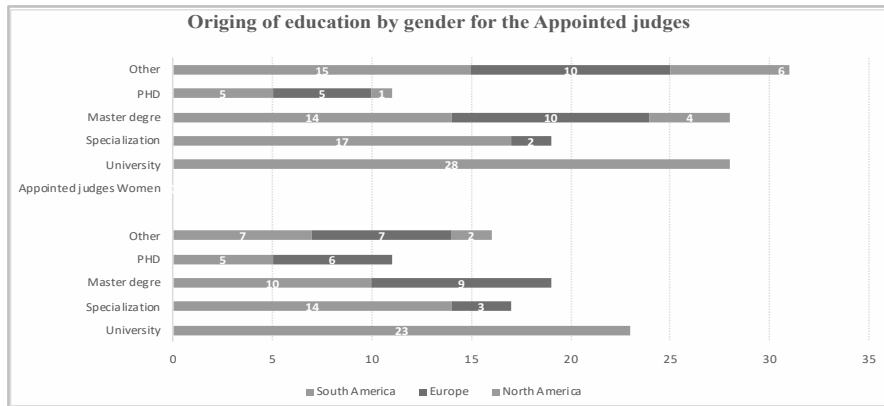


FIGURE 5.2: DISTRIBUTION OF MEN BY YEARS OF EXPERIENCE (APPOINTED)



Regarding the origin of the education of candidates, the SC seemed to prefer those candidates with academic degrees from Latin American and Europe.²⁹⁷ This could be explained by the fact that legal education in Colombia has historically been influenced by traditions of continental law in countries like France and Spain and by languages and cultural barriers.

FIGURE 6: DISTRIBUTION OF CANDIDATES AND APPOINTED JUDGES BY THE ORIGIN OF THEIR LEGAL EDUCATION



Considering that academic experience played an important role in the selection process, the data set built on the independent variable of publications shows that the SC gave a lot of weight to female candidates that had leading roles in their fields through their publications. For example, while only 24% of the female candidates had published a legal book, 50% of the women who were appointed to the SJP had published original legal research.²⁹⁸ The correlation almost expands by a factor of 2 if we analyze those women who published articles in journals (30% in the candidate data set to 55% in the appointed judges' data set).²⁹⁹

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

FIGURE 7.1: DISTRIBUTION BY TYPE OF PUBLICATIONS USED (TOTAL)

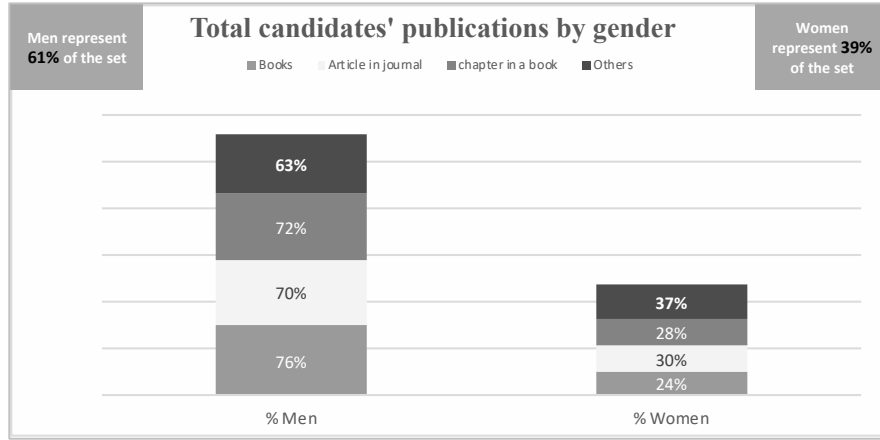
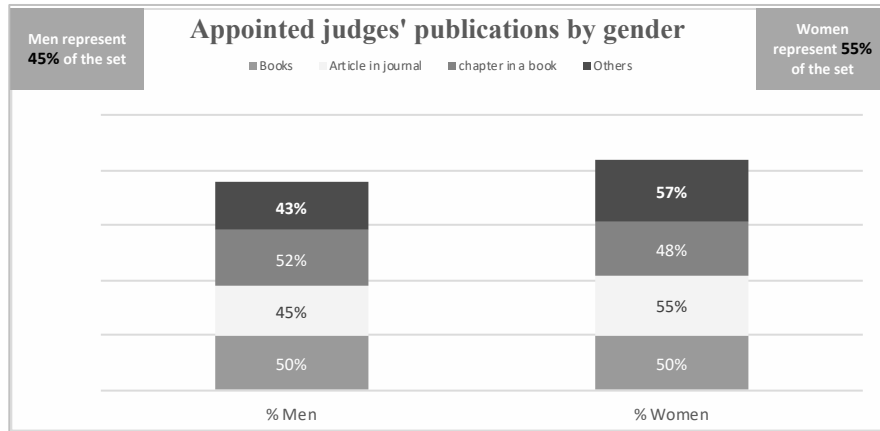


FIGURE 7.2: DISTRIBUTION BY TYPE OF PUBLICATIONS USED (APPOINTED)



While there was a clear effort made by the SC regarding the gender criteria, the regional diversity criteria shows mixed results. If the data set of candidates is compared with that of the appointed judges based on the region of birth variable, we can see that the capital, Bogota, is heavily represented in the final result, although there was an almost equal participation among the other geographical regions of Colombia.³⁰⁰ However, the data seems to confirm one of the problems regarding the access to the online platform. The low turnout in the southern and pacific regions, traditionally poor areas with low Internet coverage, showed that the SC failed to implement safeguards that promoted the participation of lawyers that live in those areas. Taking into account that the analysis suggests that the Commissioners were careful in maintaining the regional distribution of the applicant pool, it can be argued that a higher

³⁰⁰ *Id.*

participation of persons from these zones would have been reflected in a higher participation in the final composition of the SJP.

FIGURE 8.1: DISTRIBUTION BY REGION OF ORIGIN (TOTAL)

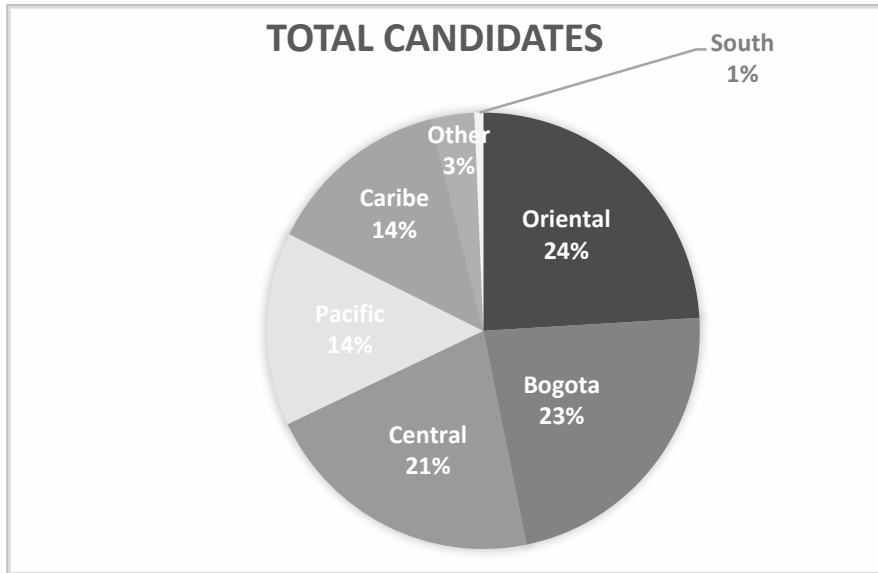
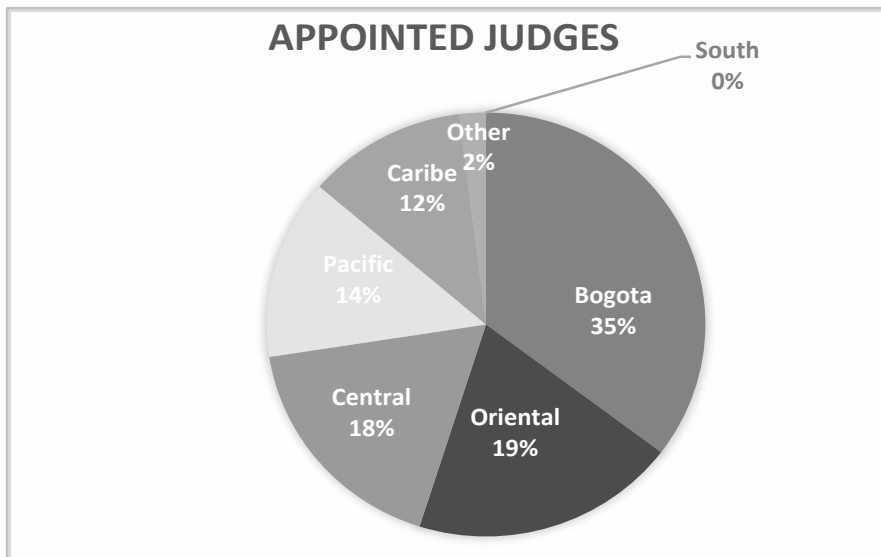


FIGURE 8.2: DISTRIBUTION BY REGION OF ORIGIN (APPOINTED)



This is confirmed if the analysis is made based on the variable of city of birth. Here, we found that non-regional candidates who were born in the four cities traditionally are favored because these places are considered the political and economic centers of Colombia. Yet, the data set shows that the SC procured

a strong representation of lawyers that did not come from those centers of power.³⁰¹

FIGURE 9.1: DISTRIBUTION BY CITY OF BIRTH (TOTAL)

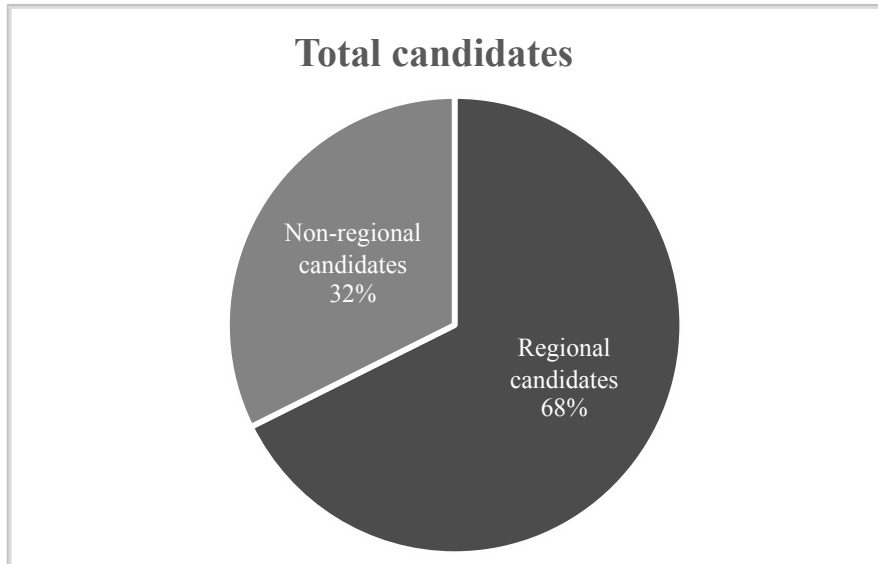
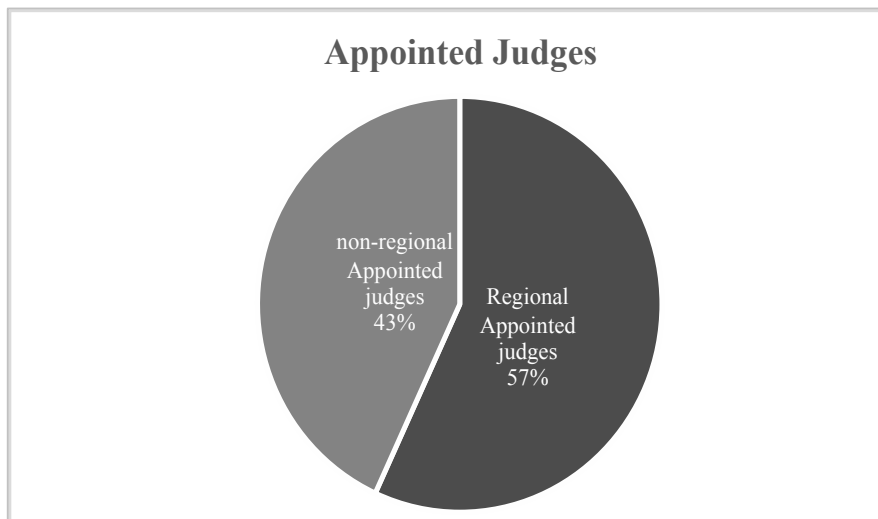


FIGURE 9.2: DISTRIBUTION BY CITY OF BIRTH (APPOINTED)

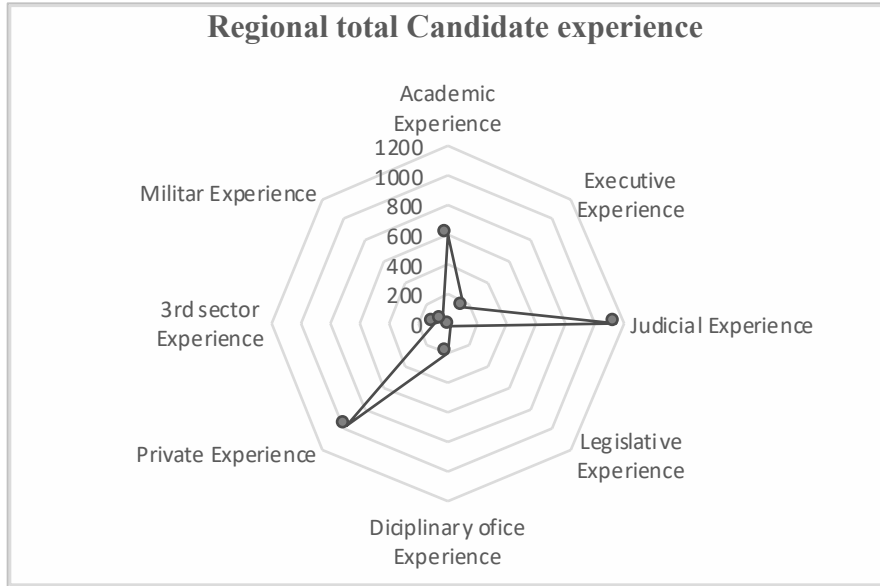


Furthermore, when the data is tabulated with the variables of city of birth (regional candidates are defined being born outside the four major cities) and professional background, taking the whole universe of candidates, the charts

³⁰¹ *Id.*

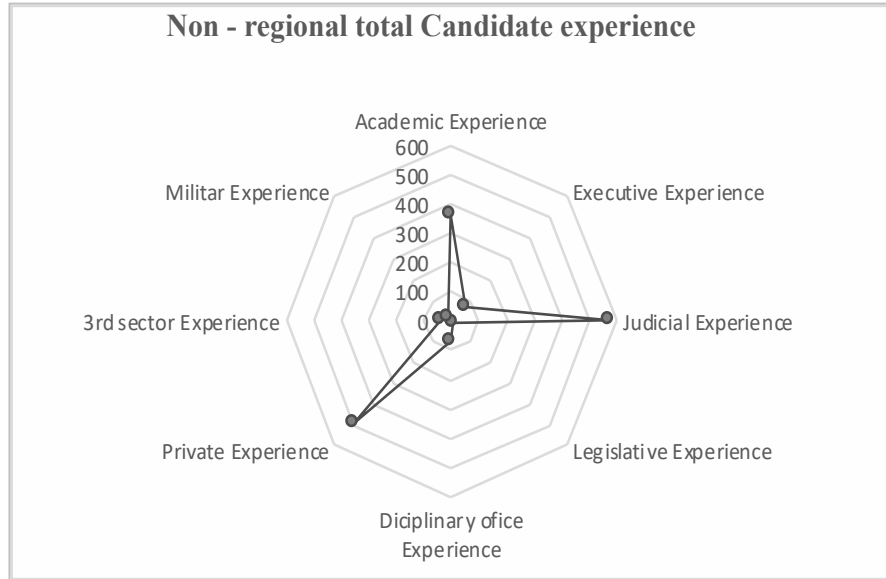
show a strong homogeneity of the legal professionals in the country.³⁰² This could be interpreted as an obstacle that the SC had to confront in order to guarantee a more diverse Court.

FIGURE 10.1: DISTRIBUTION OF CANDIDATES BY CITY OF BIRTH VERSUS PROFESSIONAL BACKGROUND (REGIONAL)



³⁰² *Id.*

FIGURE 10.2: DISTRIBUTION OF CANDIDATES BY CITY OF BIRTH VERSUS PROFESSIONAL BACKGROUND (NON-REGIONAL)



However, a finding appears when the independent variables of regional origin and expertise are isolated in an analysis of the SJP. While the results are consistent with those of professional background in Figures 10.1 and 10.2, in the case of candidates that were born in political or economic centers, the SC gave more weight to lawyers with judicial experience.³⁰³ This might be explained by the fact that, because of their location, these people had to solve more complicated legal problems as judges of big urban centers.

³⁰³ *Id.*

FIGURE 11.1: DISTRIBUTION OF APPOINTED JUDGES BY CITY OF BIRTH VERSUS PROFESSIONAL BACKGROUND (NON-REGIONAL)

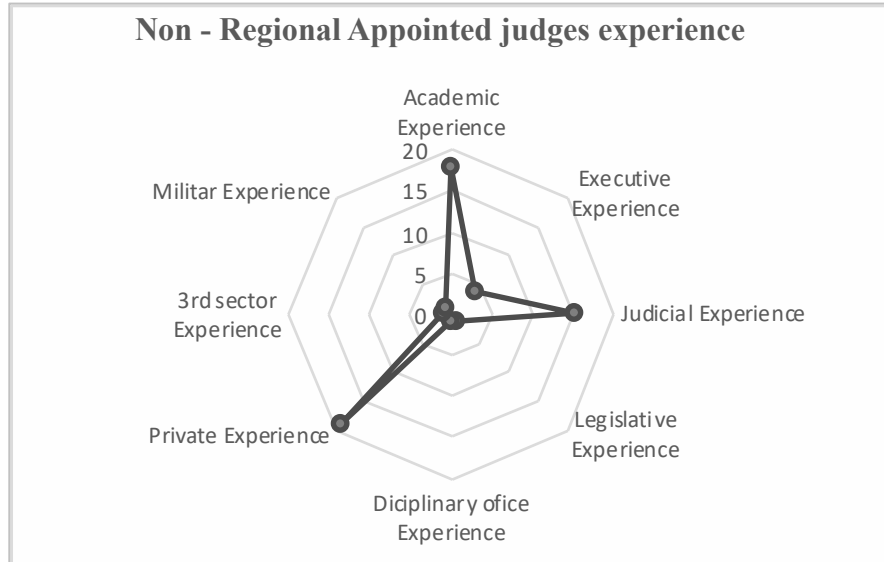
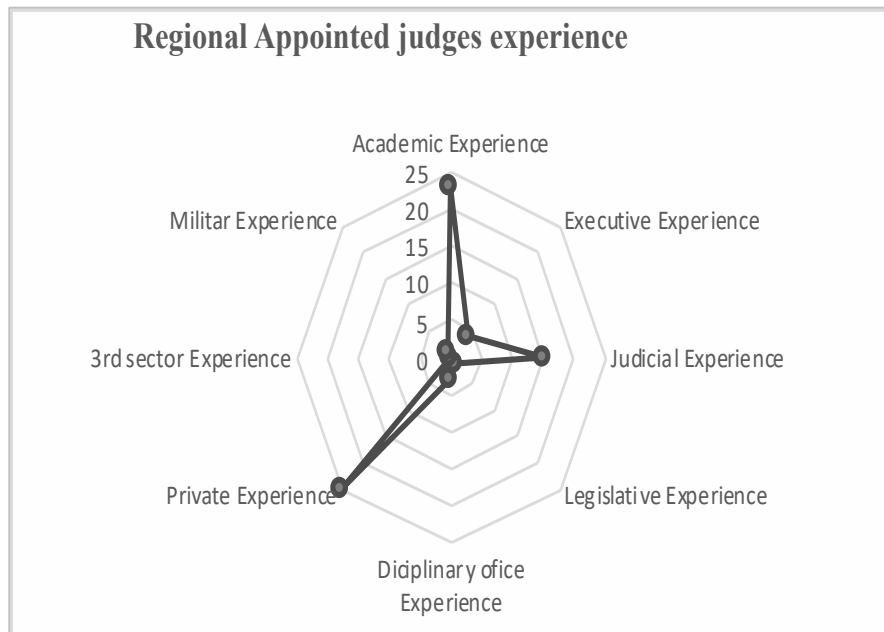


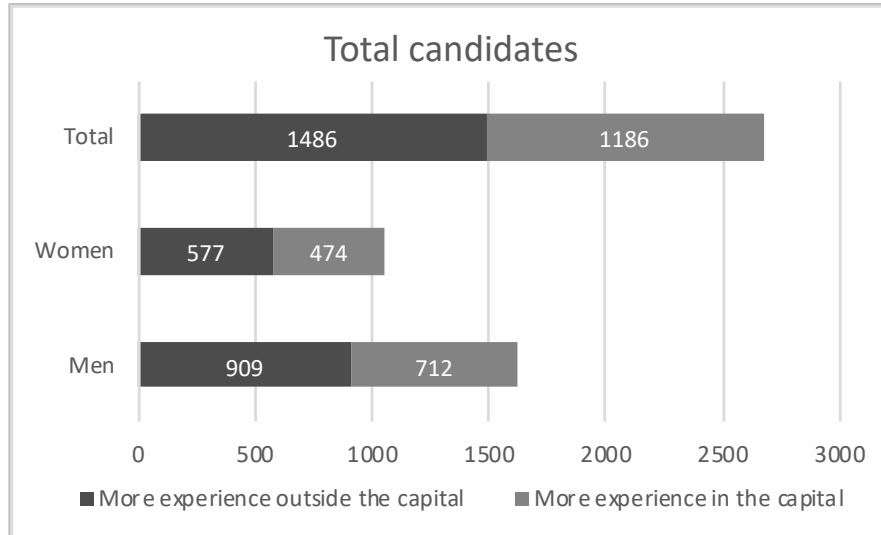
FIGURE 11.2: DISTRIBUTION OF APPOINTED JUDGES BY CITY OF BIRTH VERSUS PROFESSIONAL BACKGROUND (REGIONAL)



Apparently, the SC applied a regional perspective to fulfil the formal selection criteria of origin diversity included in the Peace Accord and the Constitution. However, Figures 11.1 and 11.2 show that the SC did not fully apply the regional criteria contemplated in the Peace Accord. When divided by

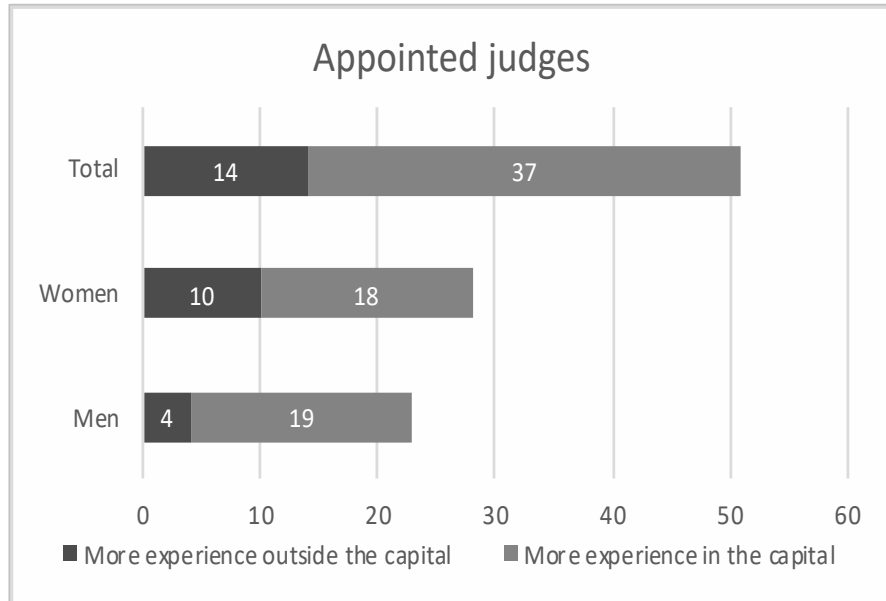
days of work, regardless of their city of birth, a considerable number of SJP judges have worked and lived the majority (more than 50%) of their lives in Bogotá.³⁰⁴ This confirms that in a highly centralized country such as Colombia, regional lawyers that want to advance in their careers must move to the capital early in their lives. However, a question remains open in terms of the SJP selection process because it is not clear if these lawyers can be considered as true representatives of their regions, since they have been out of touch with the perils of their communities. The regional diversity criteria were applied only based on the city and region of birth of the candidate, but the SC could have applied a higher standard of selection.

FIGURE 12.1: DISTRIBUTION OF CANDIDATES AND APPOINTED JUDGES BASED ON THE PLACE WHERE THEY HAVE DEVELOPED THEIR LEGAL CAREER (TOTAL)



³⁰⁴ *Id.*

FIGURE 12.2: DISTRIBUTION OF CANDIDATES AND APPOINTED JUDGES BASED ON THE PLACE WHERE THEY HAVE DEVELOPED THEIR LEGAL CAREER (APPOINTED)



Regarding ethnic criteria, the data set shows that indigenous communities were more favored, proportionally, than African Colombians in the final composition of the Tribunal. Also, Romani were not included in the final composition.³⁰⁵ This does not necessarily mean that the SC consciously discriminated against this community. A probable hypothesis is that while indigenous and African Colombians lawyers are highly trained, Romani attorneys did not have a proper legal education, showing a more structural discrimination against them, not driven by the SC.

³⁰⁵ *Id.*

FIGURE 13.1: DISTRIBUTION OF CANDIDATES AND APPOINTED JUDGES REPRESENTING MINORITIES (TOTAL)

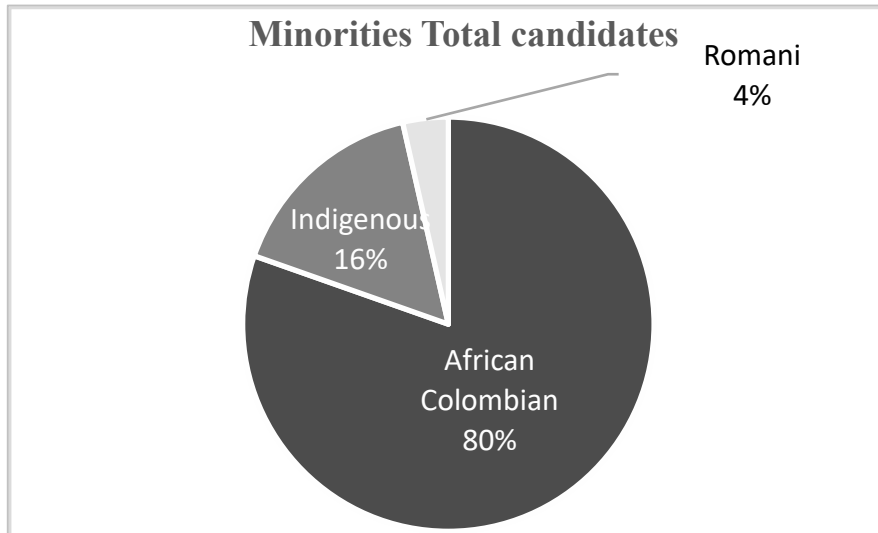
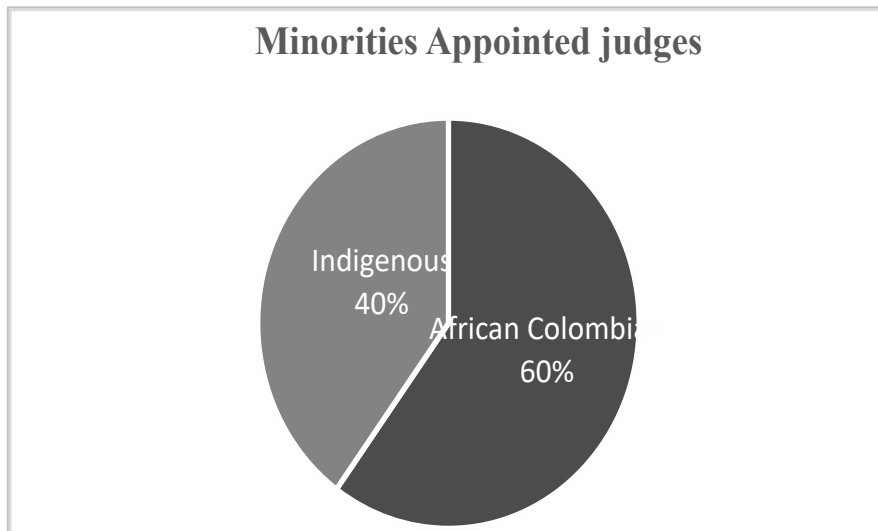


FIGURE 13.2: DISTRIBUTION OF CANDIDATES AND APPOINTED JUDGES REPRESENTING MINORITIES (APPOINTED)

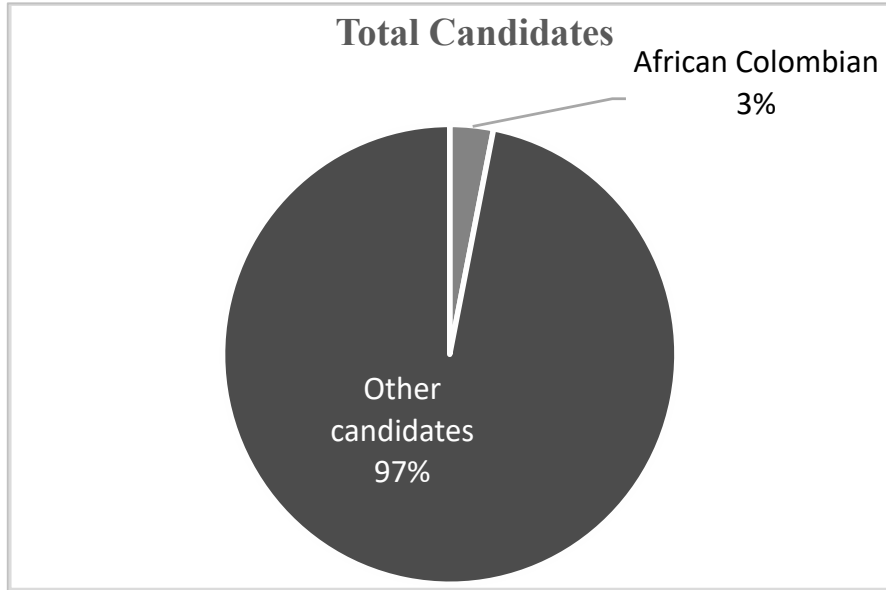


When Afro-Colombian lawyers are compared against the rest of the sample it is clear the Committee took a clear stand in favor of this community in the selection process. While they only represented 3% of the candidate pool, Afro-Colombian judges represent 12% of the SJP³⁰⁶ their representation grew by a factor of 4. In the case of the indigenous community the trend is clearer. Their

³⁰⁶ *Id.*

representation grew by a factor of 8 based on the data set of all the candidates to the SJP (1% of the pool of candidates compared to 8% of the appointed judges).³⁰⁷

FIGURE 14.1: DISTRIBUTION OF AFRICAN COLOMBIAN CANDIDATES AND JUDGES (TOTAL)



³⁰⁷ *Id.*

FIGURE 14.2: DISTRIBUTION OF AFRICAN COLOMBIAN CANDIDATES AND JUDGES (APPOINTED)

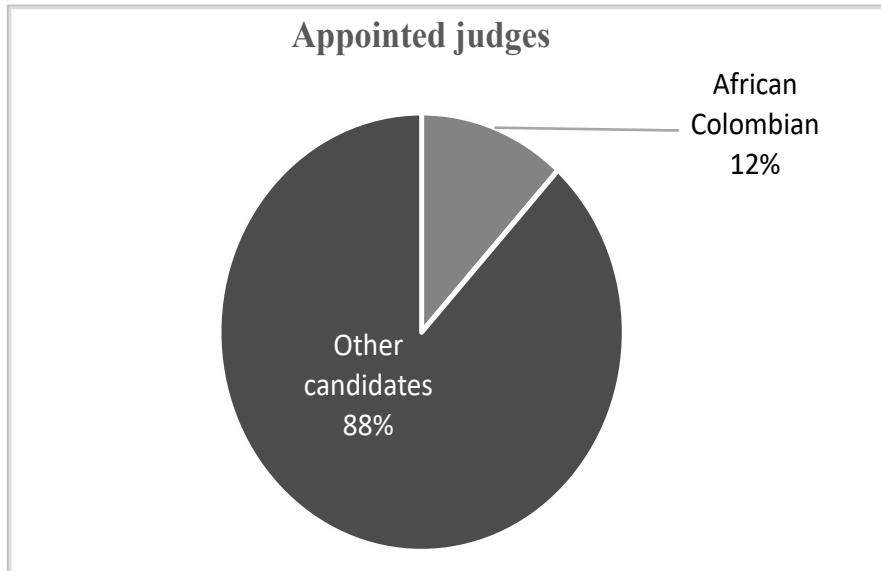


FIGURE 15.1: DISTRIBUTION OF INDIGENOUS CANDIDATES AND APPOINTED JUDGES (TOTAL)

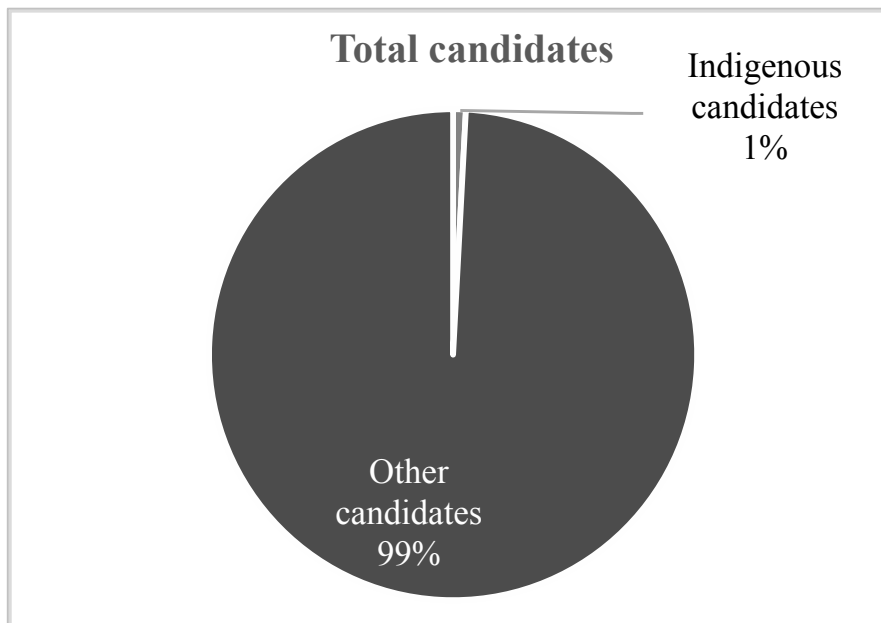


FIGURE 15.2: DISTRIBUTION OF INDIGENOUS CANDIDATES AND APPOINTED JUDGES (APPOINTED)

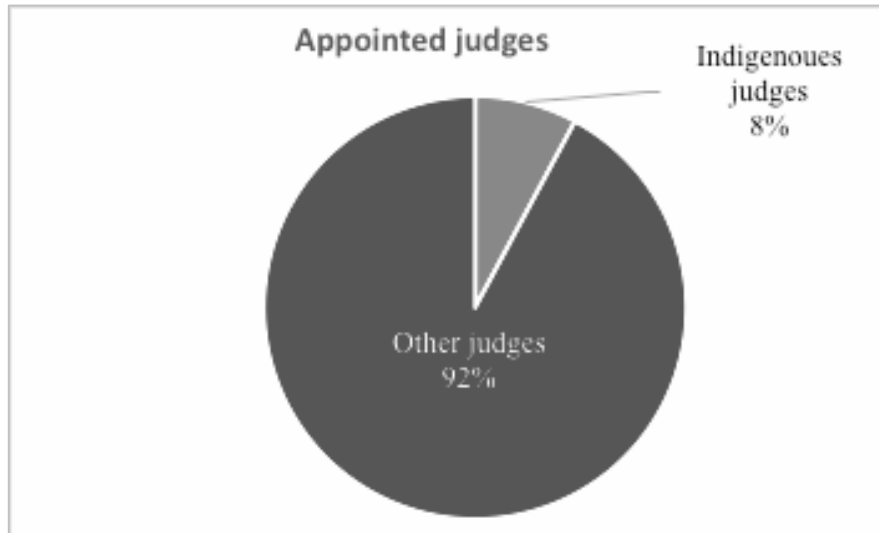


Figure 16 represents a cross reference analysis between the ethnic variable and the expertise variable. It shows that the Committee kept its general trend regarding academic and private experience.³⁰⁸ However, in the case of Afro-Colombian candidates, it also gave weight to those with executive experience.³⁰⁹ And in the case of the indigenous community, it gave weight to lawyers with legislative experience.³¹⁰ This could be explained by the fact that, traditionally, those in the indigenous community have been more successful in organizing at a political level when running for public office as compared to Afro-Colombians, who have been less successful.³¹¹

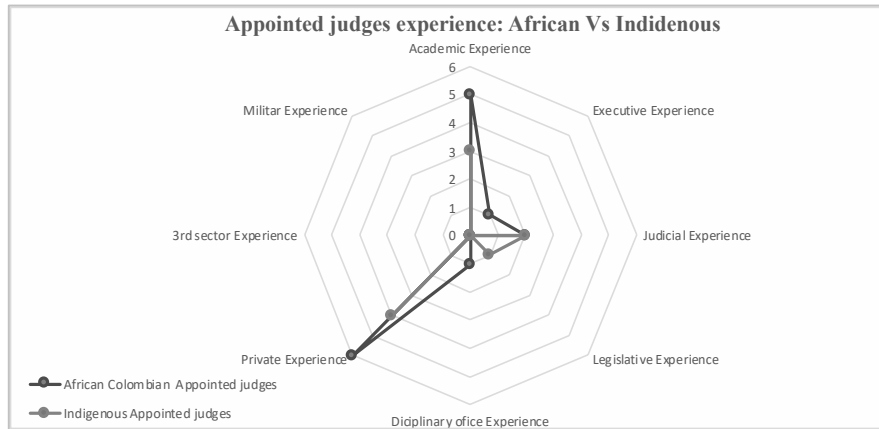
³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ See generally María Teresa Findji, *From Resistance to Social Movement: The Indigenous Authorities Movement in Colombia*, in *THE MAKING OF SOCIAL MOVEMENTS IN LATIN AMERICA: IDENTITY, STRATEGY AND DEMOCRACY* (Arturo Escobar & Sonia Álvarez, eds., 1992).

FIGURE 16: DISTRIBUTION OF APPOINTED JUDGES BY ETHNIC ORIGIN VERSUS PROFESSIONAL BACKGROUND



Finally, regarding the way the SC qualified the military experience or background of the candidates the data suggests that the Commissioners also favor applicants that came from the Armed Forces. This can be concluded based on the distribution presented in the figures below, which show that the correlation between candidates and appointed judges with military experience grew by a factor of 4.³¹² This could suggest that the critics exposed by *Mrs. Hamlet* and *Mrs. Horatio* that stated that the SC did not try to guarantee a balance distribution among the judges of the SJP, are not supported by the evidence. However, based on the relation with other professions, it is not possible to conclude that the Commissioners gave the same weight to the military background as they did to other professions. This is so because the sample of all the candidates with military backgrounds is very small (22) compared with those candidates that had academic experience (860), judicial experience (1505) or a background in the private sector (1224).³¹³

The distributions displayed in this chapter suggest that the SC applied the formal criteria in a rather consistent way. Women, minorities and candidates born outside the capital outperformed others in the final stages of the process and clearly have a measurably higher representation on the SJP. Also, the interpretation made by the Commissioners of the rules of selection favor two particular backgrounds—academia and private practice—over other backgrounds that could be seen as more traditional for this type of court (in particular, judicial experience).³¹⁴ However, regarding the regional approach, the data suggests that the SC applied very restrictive criteria to define those candidates who could represent the regions.³¹⁵ For members of the Commission the only important condition was the region or city of birth. Yet, perhaps this was due to the traditional structure of a legal career in Colombia, that

³¹² Data Set, *supra* note 290.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

concentrates success in the big cities and in the capital.³¹⁶ This seems contradictory, as the SJP is highly diverse regarding gender and ethnicity, but not from the viewpoint of regional representation.

FIGURE 17.1: DISTRIBUTION OF MILITARY CANDIDATES AND JUDGES (TOTAL)

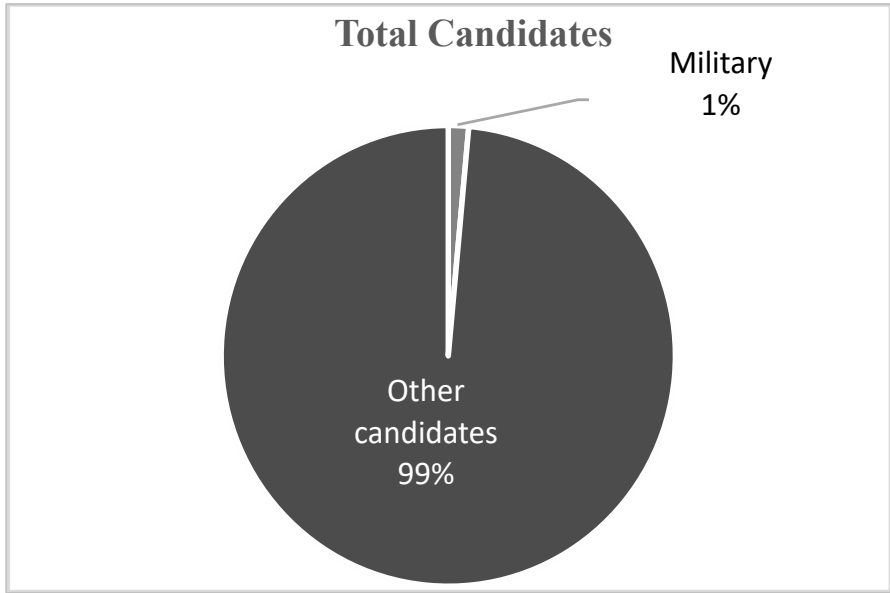
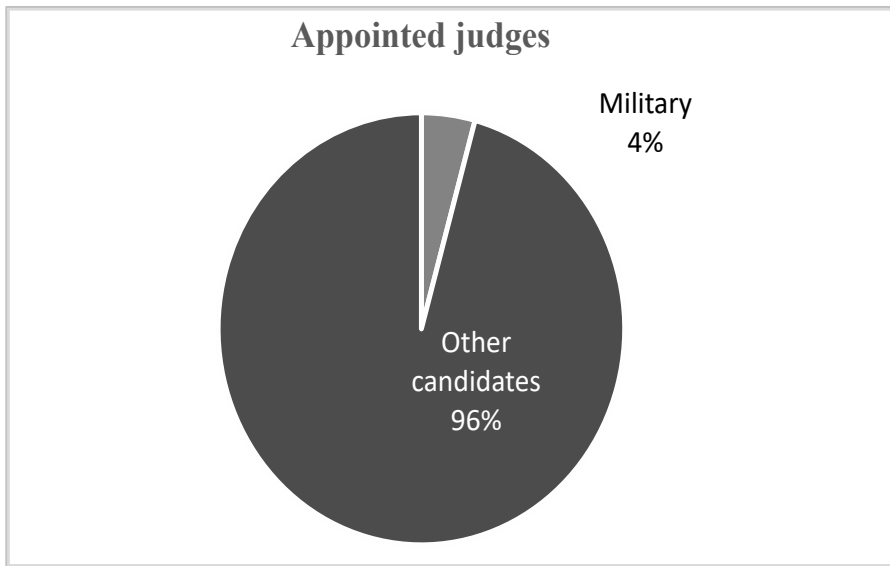


FIGURE 17.2: DISTRIBUTION OF MILITARY CANDIDATES AND JUDGES (APPOINTED)



³¹⁶ *Id.*

The distributions showed in this chapter suggest that the SC applied the formal criteria in a rather consistent way. Women, minorities and candidates born outside the capital outperformed in the final stages of the process and clearly have a measurable representation in the SJP.³¹⁷ Also, it seems that the interpretation made by the Commissioners of the rules of selection favor, academia and private practice, over other backgrounds that could be seen as more traditional for this type of court (in particular the judicial experience).³¹⁸ However, regarding the regional approach, the data suggests that the SC applied restrictive criteria to define those candidates who could represent the regions.³¹⁹ For the members of the Commission the only important condition was the region or city of birth. However, this was most likely a product of the traditional structure of a legal career in Colombia, that concentrates success in the big cities and in the capital. This seem paradoxical as the SJP is highly diverse regarding gender and ethnicity but not from a viewpoint of regional representation.

CONCLUSION

*“In this crazy war we are all perpetrators, some by their actions and others by their silence.”*³²⁰ This is a line that forms part of a gospel hymn chanted by the *Alabadoras de Bojayá*—a group of African Colombian women that survived the massacre of Bojayá—during the signing ceremony of a Peace Agreement that ended a 50-year armed conflict between the Government and the Armed Revolutionary Forces of Colombia.³²¹ This Article analyzes a new process for selecting the judges that are going to be in charge of judging the perpetrators, by action or silence, of the civil war in Colombia.

Three main conclusions can be drawn from this quantitative and qualitative analysis. The first conclusion relates to the personal impressions that the interviewed stakeholders have in the process. The appointed judges have, in general, a very positive view of the process. However, although they believe that the digital mechanism designed by the SC guaranteed the transparency of the process, they identified some obstacles related to interactions with the online platform and the possibility of accessing it in all the regions of Colombia. This first objection is more related to a generational gap with the use of technology and the traditional system of appointing judges in Colombia that completely disregards the application of new knowledge for the composition of the judiciary. However, the observations related to platform access that displayed by those judges who are ethnic minorities and live in isolated regions of the country seems to be a major problem in the process. This situation worsened because the SC did not implement the proper measures, due perhaps to

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Signing Ceremony of the Peace Accord between Juan Manuel Santos' Government and FARC*, YOUTUBE (Jan. 9, 2019), <https://bit.ly/2SGzfkS>.

³²¹ *Id.*

budgetary or time constraints, to offer technical support to those candidates that had problems uploading information due to their unreliable Internet connections.

This is an example of the paradoxical use of technologic advancements in third world countries such as Colombia. On one hand, it has the capacity to exponentially improve the transparency, efficiency and reliability of processes. Yet, on the other hand, it consolidates social and economic gaps. It could be said then that one of the lessons coming out of this process is that it is important to include a space where applicants could receive tech support and be educated on the use of digital tools. In this sense, the selection process not only creates an incentive to participate but also reduces a tech breach between candidates that clearly hinders the possibility of creating a plural and diverse Tribunal.

Despite some shortcomings, the use of an algorithm to qualify each one of the formal criteria had the advantage of providing each Commissioner with a common standard for evaluating all of the applicants. This allowed the work inside the SC to be more efficient and reduced, at least before the creation of the short list, the influence of any informal bias. Also, the fact that the majority of the members of the SC lived and worked outside Colombia helped, by the mere effect of the geographical distance, to limit any leverage a particular candidate could have over the Commissioners. Also, according to the interviews, the method applied by the SC, since the beginning, helped highlight that candidates that by express disposition of the agreement, were to be favored in the process: women, ethnic minorities and lawyers outside the capital.

However, it is not clear if, when cross-referenced, any of these criteria had more weight than the others. The statistical correlation seems to suggest that gender was a predominant factor. This is based evidence that the shift in the distribution between women candidates and women judges was clearer than the distribution based only on the ethnic and regional origin of the candidates. In other words, although proportionally the shift in the changes between minority candidates and regional candidates was numerically bigger, the final representation of women was higher than that of every other criterion. This could be explained by two factors that do not necessarily exclude each other. The first one is that more women applied to the spots in the SJP than minorities and other lawyers from the region. The other factor be that the Commissioners preferred women. This preference would be a way to underline the advantages of the SJP process over the more traditional way of appointing judges in Colombia that has systematically underrepresented women in the judiciary.

Also, the rules and conditions for submitting an application to the SC apparently had some gaps. For example, candidates self-reported, in an arbitrary manner, the weight of their experience. This could have allowed some candidates to misrepresent their backgrounds in order to adapt to the expertise criteria put forward in the rules of selection. From the interviews, it is not clear how the safeguards implemented by the administrative staff of the SC, by direct instruction from the Commissioners, detected this type of anomaly. It is clear that the SC took all the necessary measures to review the authenticity of the applicant's information. They did this by asking for particular certifications for all the information uploaded by the candidates to the online platform. Yet, it seems that the design of the process did not provide the proper measures to review the validity of the percentages each candidate randomly assigned to their experience.

Nevertheless, the SC was capable of processing and reviewing the considerable amount of information it received from the public in the form of comments about the candidates. The rule that forbid anonymity in the process was pivotal for this success. It served as an incentive against fake or poor-quality information because people had to backup what they said with their identity. The decision to keep the information secret and only available for the members of the SC was a positive step toward promoting the participation of the public in the process, especially regarding controversial applicants that could have previously been involved in ethical or legal problems. The truth of the matter is that neither the applicants, the media, nor other outside parties had access to those comments and the information was never leaked to the public, even when the webpage of the SC was attacked by hackers that sought to retrieve that information.

The fact that some candidates used the public comments as a proselytizing tactic was not seen favorably by the SC. It is not clear if this actually limited the possibility of applicants being short-listed. The data collected only allows one to correlate the formal criteria incorporated in the platform and this thesis only offers a grasp on the decision-making process inside the SC. It is true that the sole candidate not picked, who interviewed for this Article, admitted that he used these tactics. Nonetheless, it is not possible to deduce from that any plausible connection with the decision of the Commissioners to not include him on the short-list of applicants. In sum, compared to the traditional appointment system of other transitional courts in the world, the inclusion of public comments in the selection process must be seen as a contribution of the Colombian model. For the first time, candidates were subject not only to a bureaucratic scrutiny but to a democratic evaluation of their CVs. Whether this could have an impact on the legitimacy on the Tribunal remains to be answered. Though, this should be seen as a decision that enhanced the transparency of the selection and as an additional method to evaluate an applicant—especially if they hid relevant information from the Commissioners.

The process for choosing the short-list was less clear. Among the Commissioners, there was an agreement to choose two candidates per spots available in the process; however, the final list of applicants who were called to interview was 78. As opposed to the early stages of the process, this transition seems to be unclear for the interviewed stakeholders. Although the online platform allowed the SC to divide the candidates between an upper, middle and lower tier, the information collected does not allow one to determine how the final decisions were made. It is inaccurate to conclude that the reduction of the applicant's list was based on informal criteria or personal biases of the members of the SC. But, due to the lack of formal rules in this part of the process, the SC did not announce publicly its procedure to elaborate the short-list, and neither the appointed judges nor the candidates knew about the "two candidates per spot" rule. This is clearly a stage in the process where the standard of transparency used rigorously by the SC in the first part of the process was not entirely applied.

Overall, the stakeholders saw the interviews as another positive aspect of the appointment process. The impression was that the members of the SC did not treat the space as a mere formality. The dialogues and interactions that occurred during the interviews had an impact on the final decision made by the SC. However, from the interviews and the data collected it was not possible to

grasp of how much weight this part had in the deliberations of the Commissioners. From the interview with *Commissioner Hemingway* it seems that the best interviewees were the ones who already occupied a place in the upper tier of the pool of applicants. Do the interviews serve just as a confirmation of the algorithm used by the SC in the first stage? Which statistical model could be used to analyze the impact of the interviews? These are questions that remain open.

This stage was not exempt of criticism. The fact that all the interviews were conducted in Bogotá during a short period of time presented an obstacle for those candidates who lived outside the capital. The short notification worsened the situation for these applicants. The SC had to work under the restriction imposed by the fact that three of their members were foreigners who lived outside the country who worked *ad hoc*. Therefore, they could not be committed full-time to the work of the SC. While the SC wanted to promote diversity in the SJP, the way they organized applicant interviews contradicted this goal and actually had the potential of reducing diversity.

Another circumstance raises the issue of the regional representation in the Tribunal. Nominally, based on the data collected, only one-third of the appointed judges were born in the capital. This could be seen as an achievement of the SC in its intention of creating a more plural SJP. However, the data also revealed that only 14 of the 51 judges actually had developed the majority of their professional career outside the capital. This reality exposes some of the limitations of the proxies used by the SC to define the regional origin of the applicants. Also, it is a good example of the reality of the legal profession in the country. The possibilities for social mobility are concentrated in a disproportionate way in the capital. Because of this, attorneys, like many other liberal professionals, have less opportunities for advancement in their regions outside Bogotá. Can lawyers that were born outside the capital but have lived and worked many years in it still be considered a regional representative? The question remains open and maybe only the work of the Tribunal and the success, or not, of applying a regional perspective in resolving its cases could eventually offer an answer.

On the contrary, the data and the interviews regarding minorities showed that there was a clear advantage for these communities in the selection process. African-Colombian and indigenous representation in the Tribunal grew by a factor of four and eight respectively, compared to the universe of candidates that applied. Undoubtedly, this could be considered one of the successes of the SJP. Using a traditional affirmative action approach, the SC was able to apply the formal criteria that favored minorities. However, the distribution between minorities was not equal. Afro-Colombians constituted the majority of those representations by amounting to 60% of the appointed judges. It is not clear if a parity rule should have been established to represent the spirit of the Peace Accords in a more faithful way. However, the interviews may have revealed that this was a contentious issue. Regarding the military, the data contradicts the assumptions of those who opposed the Peace Accord. The correlation between those candidates who had a military background and the appointed judges grew by a factor of 4. However, it is true that this universe of candidates, compared to other groups such as women for example, was extremely low. The majority of the objections regarding the SC are related to its legitimacy. However, the fact

that these opposing sectors did not actively participate in the process seems to be a missed opportunity.

In conclusion, the application of the criteria gave proportionally more weight to certain sectors (women, black, indigenous) in the final composition of the Tribunal. Regardless of the fact that there were less candidates from these communities, the Tribunal's diverse make-up reflected the SC's affirmative action approach when choosing applicants from a more homogenous pool. However, it remains unclear if the coalescence of the Court is strong. Further, it is uncertain how that court has reacted to internal and external pressures, taking into account that the Tribunal was founded in 2018, the same year the political opposition to the Peace Agreement came to power in the presidential elections.³²² Also, internal divisions among former FARC commanders have created high-level defections among its ranks.³²³

Gabriel García Márquez wrote in one of his most famous books that races condemned to one hundred years of solitude did not have a second opportunity on earth.³²⁴ The selection process, with its advancements and problems, offers a unique experiment to understand how judges are appointed in the hopes of breaking the violence loop Colombia has lived in for more than 50 years. Empirical Legal Studies can contribute to finding an answer to this difficult question. In other words, they could help find a second opportunity for Colombia.

³²² Iván Duque Márquez, a former Colombian senator and right-hand man of former president Uribe, became the President of the country. During his campaign, Mr. Duque was a harsh critic of the Peace Tribunal and the transitional justice model set-up in the Peace Accords accusing them of promoting impunity. In power, Mr. Duque vetoed a critical law that enacted all the legal procedures of the Court, a situation that caused a political crisis that ended when the Colombian Congress overruled the veto. Ted Piccone, *Is Colombia's Fragile Peace Breaking Apart?*, BROOKINGS (Jan. 28, 2020), <https://brook.gs/37zzVPU>.

³²³ On August 29, 2019 a splinter cell former FARC members commanded by Iván Márquez, a top commander that was a member of the guerrilla delegation during the peace negotiations, announced that they were renouncing to the Peace Accord and that they were again raising in arms against the State. Although they were immediately expelled from transitional justice system by the Peace Tribunal, the news rocked the country and created a turmoil of unpredictable consequences [Nicholas Casey & Lara Jakes, *Colombia's Former FARC Guerrilla Leader Calls for Return to War*, N.Y. TIMES (Jan. 29, 2020), <https://nyti.ms/3aSC4bA>.

³²⁴ GABRIEL GARCÍA MÁRQUEZ, *ONE HUNDRED YEARS OF SOLITUDE* 417 (2006).