

## The Case of Salvatore Mancuso and the JEP

With Order No. 90 of 2020, the Chamber for the Recognition of Truth, Responsibility and Determination of Conduct (SRVR) of the Special Jurisdiction for Peace (JEP) rejected Salvatore Mancuso's petition to be admitted. In 1997, Salvatore Mancuso helped form the United Self-Defense Forces of Colombia (AUC), an illegal organisation that, under his command, repeatedly committed severe human rights violations in seven departments of the Caribbean and in the region of Catatumbo.

The former paramilitary chief sought to be admitted by the JEP as a non-combatant third party civilian. This he requested in light of his collaboration in intelligence, training and financial activities with the Colombian Army between 1989 and 1997, as well as for crimes related to the para-economy and his involvement in events being investigated in Case 004. If the JEP had accepted Mancuso as a third party, this would have been an important milestone in achieving contributions to truth and reparations to victims that had not been obtainable under the Justice and Peace Law. This snapshot examines the case of Mancuso and developments following the JEP's decision.

### The Law of Justice and Peace

In 2005, as a result of the peace dialogues initiated with the Government in 2003, members of the now extinct AUC demobilised and became subject to the Justice and Peace Law. This created a legal<sup>1</sup> framework within which a different process was established for members of organised armed groups that operate outside the law. This focused on those that were armed and performed military functions within the context of the conflict, whilst excluding other important actors, such as those funding paramilitary groups.

In 2008, the Government extradited 14 former AUC commanders to the USA, one of whom was Salvatore Mancuso. These commanders were all accused of narco-trafficking. As a result of the extradition, these commanders who are of crucial importance for the peace process, stopped collaborating with the Colombian justice system.



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## Paramilitaries and Third Party Civilian Actors

Following the signing of the peace agreement with the FARC-EP in 2016, another judicial framework emerged with the establishment of the JEP. In contrast to the Justice and Peace Law, this framework allows third party financiers, and those who collaborated with any of the actors in the armed conflict, to appear before the transitional justice court.

Cases of former paramilitaries do not generally fall under the JEP's jurisdiction, as this jurisdiction does not replace those decisions taken within the special process of Justice and Peace. However, in the case of Fabio César Mejía Correa, the Appeals Section of the JEP recognised that paramilitary figures have in many cases played different roles in different moments of the conflict. When it is possible to determine that before or after being a fighter, in any period of their life, the petitioner played the role of third party civilian, the JEP's jurisdiction can be extended exceptionally in order to consider these cases. This would include those actors that initially financed, supported and promoted paramilitary groups and later entered the criminal structure of these groups, or vice versa.

## The Case of Mancuso

The SRVR decided to reject the petition made by Mancuso because it had not been clearly established by the ordinary justice system whether he had played the role of third party civilian in the period between 1989 and 1997. Three magistrates considered the decision should have been different and issued a dissenting opinion. They argued that Mancuso should not have been denied admittance as a third party civilian for the period between 1989 and 1994, in which he belonged neither to the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU) nor to the AUC.

For the Magistrates Belkis Izquierdo and Oscar Parra, Mancuso's civilian involvement in the conflict is not visible in the legal sources analysed by the SRVR and these topics have not been dealt with in-depth by the judges in the Justice and Peace process. For this reason, they suggest that Mancuso should have been given the opportunity to be heard.



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The Magistrate Nadiezhda Henriquez followed a different line of reasoning, arguing that the decision taken by the SRVR does not fall under the cases contemplated for the condition of exceptionality, developed by the Appeals Section for paramilitary members. According to Henriquez, the decision neither respects the right to truth of victims nor the guarantee of non-repetition in this region of the country that has been so affected by the armed conflict. In the case of Álvaro Ashton, it was established that the search for truth is one of the most fundamental needs of victims. For this reason, a more flexible and non-restrictive notion of the right of admission to the JEP and of the remit of its jurisdiction is needed.

Mancuso's case is currently under review by the Appeals Section. If the appeal is accepted, the case could continue under the JEP. If not, the former paramilitary commander will be able to freely decide whether to continue contributing to truth in a different manner, through the Truth Commission.

***Embrace Dialogue recognises the efforts and advances made by the JEP in the difficult decision-making process related to third party collaborators in the armed conflict. We hope that the decisions taken will be guided by the principle of prioritising both the interests of victims and the clarification of truth.***



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