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Kai Ambos | Stefan Peters [Eds.]

Transitional Justice in Colombia

The Special Jurisdiction for Peace

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With the collaboration of Susann Aboueldahab

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Preface

The Colombian *Jurisdicción Especial para la Paz* (JEP, Special Jurisdiction for Peace) is the judicial center piece of the national Transitional Justice system (*Sistema Integral de Verdad, Justicia, Reparación y No Repetición*, SIVJRNR; Integral System of Truth, Justice, Reparation and Non-Repetition). At the same time the JEP is also at the center of public controversies about the Colombian peace process and faces a series of legal and political challenges in its daily work. In this sense, the JEP generates a continuous need for consultation, discussion and research. The articles in this volume aim to contribute to a better understanding of the JEP and to identify further research needs. At the same time, we hope to contribute to the still limited research on the Colombian peace process and the JEP in English language.

The volume starts with Gabriel Ignacio Gómez, who analyzes the political conflicts regarding the JEP from a socio-legal perspective. He examines the different interests and perspectives on the JEP from relevant political actors in Colombia and illustrates how these conflicts have been fought out in both the political and legal sphere, as well as what impact they have had on the work of the JEP.

In the next section, Kai Ambos and Susann Aboueldahab address the central claim of the JEP's critics, i.e., that it is an expression of impunity. They reject this claim taking a closer look at impunity in Colombia in general (pre-JEP) and analyzing the JEP's mandate, its essential features and key challenges. In doing so, the authors draw the bigger picture in which the JEP operates and emphasize the need for its critical monitoring. They argue that the JEP will only live up to legitimate expectations if it effectively enforces the sanctions imposed, the provisional benefits granted and, in particular, the conditional treatment of those appearing before the JEP.

Diego Tarapués examines the institutional genesis of the JEP. He highlights the need to analyze the JEP as an outcome of the peace negotiations as well as an integral part of the SIVJRNR. The author argues that, based on the standards of international law, the JEP correctly aims to address the most representative crimes committed during the Colombian internal armed conflict. Given the unique characteristics of the JEP – both at the institutional and jurisdictional level – he claims that it can be considered a *sui generis* transitional justice body.

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Carlos Guillermo Castro analyzes how criminal law mechanisms can help the JEP to fulfill the essential objectives of transitional justice, such as promoting justice, accountability, and reconciliation. His contribution focuses on three mechanisms: the conditionality regime (*régimen de condicionalidad*), special sanctions (*sanciones propias*) and the imposition of ordinary sanctions if the objectives of Transitional Justice are not met. These mechanisms allow former combatants, members of the state armed forces, public officials, and civilians to contribute to the truth process and reparation of the victims.

Kai Ambos und Gustavo Emilio Cote Barco examine the international (criminal) law framework of the JEP, i.e., they concretely identify the applicable (international) law. The main focus of their paper is the *Bloque de Constitucionalidad* and the principle of legality. In particular, the authors raise the question as to whether the application of international criminal law by the JEP leads to the retroactivity of criminal law norms that were not yet in force at the time of the commission of these crimes – thus possibly violating the principle of legality. In answering this question, they set international criminal norms in relation to the Colombian domestic legal order and its obligation to investigate and prosecute grave human rights violations.

Oscar Parra-Vera reflects on the implementation of restorative justice mechanisms during the first years of the JEP. He discusses some restorative aspects of the JEP's cases that show the potential and limitations of restorative scenarios in Colombia's transitional justice system. In this sense, Parra-Vera analyzes the challenges of ensuring victims' participation in judicial macro-cases, the form and timing of participation in the voluntary statements before the Chamber, the restorative dimensions of observation hearings during voluntary statements in macro-case 03, the restorative justice approach in territorial cases, the first three indictments and their restorative reconstruction of harm, and the guidelines on restorative sanctions and reparative works and actions.

Juliette Vargas Trujillo discusses the multiple challenges the JEP faces in ensuring meaningful participation of victims. Based on the discussion of international experiences from the International Criminal Court and transitional justice processes from Colombia, Rwanda and Kosovo, Vargas highlights that channeling collective victim participation through legal representatives bears the risk of rendering participation meaningless. Therefore, she argues that some risks, such as the homogenization of victims, lack of communication between victims and representatives, and failure to grant a minimum level of agency to victims in selecting their representatives and/or group membership must be mitigated.

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Indira Yiceth Murillo Palomino and Laura Ximena Pedraza Camacho write on access to the JEP for exiled Colombian victims. The authors present the JEP's strategies to promote the effective participation of victims outside Colombia and analyze their effects based on an empirical analysis of the macro-cases 01 ("Taking of hostages and other severe deprivations of freedom committed by the FARC EP") and 06 ("Victimization of members of Unión Patriótica"). They discuss the particular challenges that refugees and asylum seekers face in accessing the JEP and present some arguments for the JEP to consider victims of forced cross border displacement.

Jenny Pearce and Juan David Velasco deal with the challenge that the continuing violence in many parts of Colombia poses for the JEP's work. Their article studies the responses that the JEP has created to mitigate the risks of human rights violations being perpetrated against the groups and territories that are most important to the transitional justice process. Pearce and Velasco argue that it is mandatory to give priority to the development and implementation of restorative justice as a way to guarantee non-repetition and promote bottom-up participation of victims and social organizations.

Stefan Peters closes this volume with a contribution that discusses current challenges of the JEP in a context of strong political polarization, continuing operations of illegal armed groups and extreme social inequalities. Peters ends highlighting some avenues for future interdisciplinary research.

Kai Ambos
Göttingen/The Hague

Stefan Peters
Bogotá, May 2022

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List of Abbreviations

ACORE	Colombian Association of Retired Officials
Art.	Article
AUC	Autodefensas Unidas de Colombia
BAPOP	Artillery Battles No.2 La Popa
BISAN	Infantry Battalion No. 15 'General Francisco de Paula Santander'
BRIM15	Mobile Brigade 15
CC	Corte Constitucional (Constitutional Court)
CEV	Truth Commission (Comisión de la Verdad)
CLR	Common Legal Representative
CNMH	Centro Nacional de Memoria Histórica (National Center for Historical Memory)
CP	Civil Parties
CPLCL	Civil Party Lead Co-Lawyers
DAV	Department for Victims' Attention
ECCC	Extraordinary Chambers In The Courts Of Cambodia
ECHR	European Court of Human Rights
ELN	Ejército de Liberación Nacional (National Liberation Army)
ICJ	International Commission of Jurists
FARC(-EP)	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army)
Final Agreement	Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace
FIV	International Victims Forum
IACHR/ IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFIT	Institute for Integrated Transitions

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IHL	International Humanitarian Law
IHRL	International Human Rights Law
IPU	Investigation and Prosecution Unit
JEP/ SJP	Jurisdicción Especial para la Paz/ Special Jurisdiction for Peace
JPL	JEP Procedural Law
JSL	Investigation and Prosecution Unit
KSC	Kosovo Specialist Chambers
LA	Legislative Act
NRC	Norwegian Refugee Council
OIAP	Observatory for Monitoring the Implementation of the Peace Agreement
OTP	Office of the Prosecutor
PA	Peace Agreement
RPE	Rules of Procedure and Evidence
RUV	Registro Único de Víctimas (Unitary Victim's Registry)
SA	Sección de Apelación (Appeals Chamber of the JEP)
SAAD	Sistema Autónomo de Asesoría y Defensa (Autonomous System of [Legal] Advice and Defence)
SENIT	Interpretative Sentence
SIVJRNR	Sistema Integral de Verdad, Justicia, Reparación y No Repetición (Comprehensive System of Truth, Justice, Reparation and Non-Repetition)
SRVR	Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas (Chamber of Recognition of Truth and Responsibility and Determination of Facts and Conducts)
TJ	Transitional Justice
TOAR/ TOARS	Restorative sanctions and the implementation of restorative and reparative works and actions
TP	Tribunal para la Paz (Peace Tribunal)
UARIV	Unit for Comprehensive Attention and Reparation of Victims
UNHCR	United Nations High Commissioner for Refugees
UP	Unión Patriótica
VLR	Victims Legal Representatives