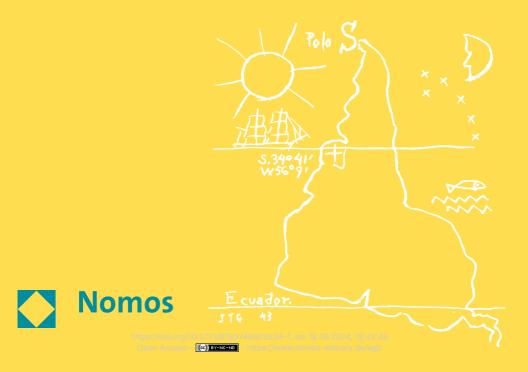
Kai Ambos | Stefan Peters [Eds.]

Transitional Justice in Colombia

The Special Jurisdiction for Peace



Studien zu Lateinamerika Latin America Studies

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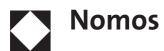
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Transitional Justice in Colombia

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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.

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.

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)

ICI International Commission of Jurists

FARC(-EP) Fuerzas Armadas Revolucionarias de Colombia – Ejército

del Pueblo (Revolutionary Armed Forces of Colombia -

People's Army)

Final Agreement to End the Armed Conflict and Build a

ment Stable and Lasting Peace
FIV International Victims Forum

IACHR/ Inter-American Court of Human Rights

IACtHR

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 Yu-

goslavia

IFIT Institute for Integrated Transitions

List of Abbreviations

IHL International Humanitarian LawIHRL International Human Rights LawIPU 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 Determi-

nation of Facts and Conducts)

TI Transitional Justice

TOAR/ TOARS Restorative sanctions and the implementation of restora-

tive 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