The Special Jurisdiction for Peace and Impunity: Myths, Misperceptions and Realities

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Abstract

The Special Jurisdiction for Peace, the key legal mechanism in the Colombian transitional justice project, has become the subject of heated debate among its firm supporters and its vehement opponents without leaving much room for more nuanced assessments. This article wants to close this gap by addressing the main misunderstandings regarding the JEP, especially those concerning its role and potential to eradicate the many decades of impunity in Colombia. It aims to provide a framework for a debate that, on the one hand, leads to recognition of the JEP's progress and potential and, on the other, acknowledges and demonstrates its most pressing challenges.

Introduction

The Colombian Special Jurisdiction for Peace (in Spanish Jurisdicción Especial para la Paz, hereinafter JEP), the legal mechanism of a larger transitional justice (hereinafter TJ) project, has become the centre of a heated debate that is situated in a complex political entanglement between its opponents and supporters. This article addresses the main misunderstandings in the discussions concerning the JEP, especially regarding its role and potential to eradicate the high level of impunity that has existed for decades in Colombia. The objective is to provide a framework for a debate that recognizes the progress achieved by the JEP while at the same time acknowledging and pointing to its most pressing challenges.

We observe that the JEP's institutional framework meets very high (international) standards (especially concerning due process obligations

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and the duty to ensure accountability for serious human rights violations) and that hence the JEP cannot be dismissed as an impunity mechanism as often done by its most fervent opponents. At the same time, however, we identify urgent challenges that the JEP faces as a starting point for a constructive critical discussion. We argue that constantly perpetuated myths and misperceptions (such as erroneous assessments about the JEP's mandate, scope and its underlying notion of justice) are detrimental to a truly critical analysis of its work, and, instead, fuel the (mistaken) perception that the JEP is one of the causes of impunity in Colombia. The article sustains that what is needed instead is a critical and constructive monitoring of the JEP's work, as well as its underlying notion of justice. The article points out key aspects concerning the JEP's often overlooked mandate, the context in which it operates and its role in the broader struggle against impunity. It closes with recommendations on how to promote a truly critical and meaningful approach towards the JEP.

1. What does impunity mean?

From their very beginning, the peace negotiations in Colombia were followed by strong criticism that such a process would end up granting impunity (Suárez 2019). These objections especially focused on the chapters of the drafted Peace Agreement regarding justice for the victims of the conflict and, thus, on the creation of the JEP itself (Sedacca 2019: 324–6). In particular, criticism was expressed that this jurisdiction would disproportionately benefit members of the Revolutionary Armed Forces of Colombia (in Spanish Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, hereinafter FARC-EP), converting this TJ mechanism into a "FARC tribunal" (León 2016).[1] After the signing of the first Peace Agreement, these voices not only persisted, but also increased during and

1 This claim was refuted by the JEP's first "indictment" handed down in the context of macro case 001, charging eight former members of the FARC-EP with hostage taking and severe deprivations of liberty, cf. JEP, SRVR (2021): Ruling No. 19. See also Bermúdez Liévano (2021). So far, the JEP has opened seven macro cases (which concern whole crime situations) that either have a thematic or a territorial focus, namely abduction (case no. 001), extrajudicial killings (case no. 003), the persecution of members of the political party Unión Patriótica (case no. 006), the recruitment of minors (case no. 007) as well as crimes committed in the departments Nariño (case no. 002) and Norte del Cauca (case no. 005), and in the subregion Urabá (case no. 004). For detailed information, see https://www.jep.gov.co/especiales1/macrocasos/index.html <10.08.2021>.

after the plebiscite, resulting in the rejection of the original Peace Agreement by a narrow majority. As a consequence, the Agreement was adopted with modifications and, although the JEP was approved, it was done only after introducing substantial adjustments (Ambos and Aboueldahab 2018: 119ff.).

In light of the above-mentioned criticism, the key question is whether the Final Peace Agreement has created a special jurisdiction that allows, facilitates, generates, or even increases impunity concerning the crimes committed in the context of the armed conflict and whether the JEP is nothing more than a mere simulation of justice. But what does impunity actually mean in this context?

The eradication of impunity for serious human rights violations is a central objective of contemporary international law. It is predicated on the assumption that States have an obligation to investigate, adjudicate and punish serious human rights violations – such as extrajudicial executions, torture, enforced disappearance, genocide, war crimes, and crimes against humanity.[2] Although this State obligation exists independently of victims' rights, clarifying the responsibility of alleged perpetrators acquires an important restorative character. Therefore, this State obligation is sometimes described as the materialization of the victims' "right to justice".[3] In sum then, all States have an obligation to ensure the effective prosecution of

2 This obligation has its roots in international law on the diplomatic protection that preceded international law on human rights, see for example Max Huber's famous dictum in the case of Spain and Morocco before the Permanent Court of International Justice, cf Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, UN Doc. E/CN.4/Sub.2/8 (1993), paras 126–7. There are currently several international instruments that establish the State's duty to prosecute and punish, cf for example American Convention on Human Rights. Regarding the JEP, see art 28 of Law 1957 from 2019, Statutory Law on the Administration of Justice in the JEP (henceforth Statutory Law).

3 Revised final report by Special Rapporteur on the question of impunity of the perpetrators of (civil and political) human rights violations, UN Doc. E/CN.4/Sub.2/1997/20/Rev.1 (1997), Annex II, Section II. See also Resolution 57/228 (2002) United Nations General Assembly, UN Doc. A/RES/57/228 (2002), which highlights that "the accountability of individual perpetrators of grave human rights violations is one of the central elements of any effective remedy for victims of human rights violations and a key factor in ensuring a fair and equitable justice system and, ultimately, reconciliation and stability within a State".

those responsible for serious human rights violations and, consequently, to fight impunity (Ambos 2018b).[4]

While the existence and necessity of this State duty seem to be evident, doubts arise as to its scope: for example, should the justice provided by the State consist of classic criminal proceedings, i.e., in the form of an inquisitorial, adversarial or mixed trial? Or do TJ mechanisms suffice that go beyond traditional criminal justice and focus specifically on the interests of the victims? The answers to these questions will depend to a large extent on the underlying concept of justice, as impunity always reflects a lack of justice (be it in its traditional form or in a broader sense). In other words, the exact contours of impunity will depend on the concept of justice employed. Therefore, and for the purposes of this paper, the critical question is: what kind of justice is the JEP's foundational basis?

2. *On what concept of justice is the JEP based?*

The JEP was created as one of the five components of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (in Spanish Sistema Integral de Verdad, Justicia, Reparación y No Repetición, hereinafter SIVJRNR) aiming to "administer justice and investigate, clarify, prosecute and punish serious human rights violations and serious infringements of international humanitarian law" (Final Peace Agreement: 112, pt. 5.1.b.). In other words, the JEP is part of a broader TJ project. Although one of the main pillars of TJ is the criminal accountability of the perpetrators, criminal prosecution is not its sole objective. Rather, TJ "comprises the full range of processes and mechanisms associated with a society's attempts to overcome the problems arising from a legacy of large-scale abuses to hold perpetrators to account, serve justice and achieve reconciliation".[5] In other words, TJ constitutes a holistic approach directed towards truth-seeking, investigation and prosecution of individuals, as well as reparation. To this end, various (judicial or extrajudicial) instruments and mechanisms are combined, primarily aimed at reaching long-lasting resolutions and

4 See also, for example, the Security Council's resolutions on the topic of Haiti: UN Doc. S/RES/1529 (2004), para 7, and the situation in Republic of Côte d'Ivoire, UN Doc. S/RES/1479 (2003), para 8. See also UN General Assembly Resolutions UN Doc. A/RES/57/228 (2002) and UN Doc. A/RES/57/190 (2003).

5 United Nations, Security Council, Report of the Secretary-General, 'The rule of law and transitional justice in conflict and post-conflict societies', UN Doc. S/2004/616 (2004), para 8.

promoting a transformation that facilitates true coexistence among the population.[6] Thus, TJ always concentrates part of its efforts towards the future of a deeply wounded society that requires a transformative process in order to move forward. In this sense, the JEP has been designed, on the one hand, to investigate and reveal the most serious crimes committed in the context of the Colombian armed conflict and to bring to justice individuals that participated (directly or indirectly) in these acts, and, on the other hand, to satisfy the rights of the victims to justice, truth, reparation, and non-repetition.[7]

Consequently, the JEP has to be analyzed in the broader context of the SIVJRNR, that is, as a TJ mechanism embedded in a conglomerate of institutions, laws and concepts that interact under a holistic idea aimed at achieving long-lasting peace and justice. Accordingly, it must be recognized first that the JEP is based on the idea of *restorative justice*, that is to say, on a concept of (prospective) justice whose central focus is to put an end to the conflict, responding to the needs of the victims, and holding the perpetrators accountable to repair the harm caused.[8] Such a concept of justice is opposed to that of *retributive justice*, where, in turn, the justification and meaning of the punishment are linked to the act committed in the past and to the idea that the perpetrators receive what they deserve – rather than to an eventual future (positive) impact that this might have (Duff 2011: 3; see also Ambos 2003: 191). Unlike the mainly retributive objectives usually assigned to (traditional) criminal justice, in a TJ context the aims are collective and not only individual (Teitel 2000: 67). Accordingly, conceptualizations of justice and punishment may change when facing large-scale and severe violations of human rights.

While there is a general consensus that the perpetrators of heinous crimes should be held accountable one way or another, the question of how this is to be done is more complex and controversial. Clearly, it is difficult to achieve what is taken for granted in everyday scenarios: criminal prosecutions that – in the event of a conviction – result in prison sentences. In a TJ context, however, this would even be insufficient, since

6 ibid.

7 CC, Judgment C-674, para 5.1.2.3.

8 cf art 4 Statutory Law. We refer here to the concept of restorative justice as used in the TJ discourse, see Uprimny Yepes and Saffon (2005); Urban Walker (2006), 384ff. For information on the general idea of restorative justice beyond the context of TJ, see Zehr (1990), 95. It is worth mentioning that art 4 of Statutory Law combines the concepts of restorative and prospective justice, by explaining the term 'restorative justice' within art 4, titled 'Prospective Justice'.

the real challenge here is to turn criminal liability into a factor that contributes to overcome the conflict; that is to say, to ensure that punishment is accompanied by the recognition of the crimes, guarantees of reparation and non-repetition, and a meaningful participation of the victims.

The prevailing response to address this problem inherent to TJ contexts is a "flexible approach" (Ambos 2018b: 215).[9] This means that the notion of justice is extended beyond the classical meaning of criminal justice, thus allowing the application of a more sophisticated approach to justice suitable for complex situations, such as massive violations of human rights or crimes perpetrated on a large scale. Importantly, this extension does not change the State's obligation to investigate and prosecute serious crimes committed during an armed conflict.[10] The Constitutional Court of Colombia (hereinafter CC) has clearly stated, with respect to the duty to investigate, prosecute and punish serious human rights violations, that:

> […] in contexts in which the aim is to put an end to the massive violation of human rights, such as in periods of transition within the context of an internal armed conflict, this duty [to investigate, prosecute and punish] can be flexible, when, in return, an effective gain is pursued in terms of achieving peace, truth, reparation for the victims, and guarantees of non-repetition, and when the *irreducible minimum* of this duty is preserved in terms of investigation, prosecution and punishment of those most responsible for the most serious and representative crimes.[11]

The design of the JEP is built on this thin line between the prosecution of crimes and the purposes of TJ. It is a mixed mechanism that incorporates retributive elements, but also – and mainly – restorative components. This dual nature is reflected in several details. One example of this is the design of alternative (non-adversarial) procedures established to promote truth-telling (so-called dialogic processes) (Cote Barco 2020: 11). Another example are the particular mechanisms to encourage collaboration with the JEP (such as alternative sanctions or amnesties, which will be

9 Regarding Colombia see CC, Judgment C-674, para 5.2.4.2.2.

10 See for example Inter-American Court of Human Rights (henceforth IACHR), *Caso Las Palmeras vs. Colombia*, para 65. IACHR, *Caso de las Comunidades Afrodescendientes Desplazadas de la cuenca del Río Cacarica (Operación Génesis) vs. Colombia*, paras 439 ("duty to investigate and […] to judge and punish"), 440 ("the State must […] remove all obstacles, de facto and de jure, that could maintain impunity").

11 CC, Judgment C-674, para 5.2.4.2.2. (emphasis added).

addressed below). Consequently, the JEP tries to reconcile the interests of a TJ process (revealing the truth, guaranteeing the centrality of the victims in the administration of justice, and contributing to the construction of a lasting peace) and, at the same time, aspires to guarantee that those most responsible for serious crimes will be held accountable – even through traditional means of criminal law.[12] It is precisely this combination of approaches (both restorative and retributive justice) that makes the JEP a unique TJ mechanism and, indeed, a model to be followed by other transitional processes, at least in terms of its normative design (JEP 2019e).

Consequently, the JEP must be evaluated based on whether it achieves a balance between i) the duty to investigate and prosecute the perpetrators of serious crimes and ii) the way it exercises this duty vis-à-vis the needs, goals, and aspirations of a TJ process (especially with respect to the discussion of whether the JEP can or cannot be equated with impunity).

3. The JEP's sanctions regime

An issue that illustrates well how the JEP deals with this balancing act is its sanctions regime, one of the most controversial issues concerning the JEP. In line with its nature and goals described above, the JEP's legal framework provides incentives to ensure that the victims' rights are respected to the maximum extent possible. In other words, those who confess, tell the truth, and participate in activities aimed at reparation and non-repetition will be given lighter sentences. Based on this idea, the JEP provides for three types of sanctions: special, alternative and regular sanctions.[13]

The nature of the sanction to be imposed depends on an assessment relative to the seriousness of the crime, the degree of the recognition of truth and accountability, and the type and intensity of the restriction of liberty.[14] The sooner those persons appearing before the JEP confess the truth, the lighter their sanction will be. Examples of the reparative and restorative functions in the context of special sanctions are activities related to demining, the development of infrastructure (e.g. building schools,

12 See pt 5.1.2 of the Final Agreement, 123–7.

13 See no 60 in pt 5.1.2.I. of the Final Agreement, 142–3; Transitory Article 11 Legislative Act 01 from 2017 (henceforth LA 1/17); art 64 of Law 1922 from 2018, adopting the rules of procedure of the JEP (henceforth RPE); arts 125–143 Statutory Law.

14 See no 60 in pt 5.1.2.I. of the Final Agreement, 142–3; art 64 RPE; art 125 Statutory Law. See also CC, Judgment C-674, para 5.3.2.4.2.

roads, or housing), or assistance in environmental projects (ICJ 2019: 89, ICJ 2020: 2; detailed Castro Cuenca 2022: 112).[15] The compliance with these duties is ensured through restrictions of freedom such as, for example, place of residence, movement control, or other monitoring and supervision mechanisms (as needed).[16]

Table 1: The JEP's sanctions regime

	Special Sanctions	Alternative Sanctions	Regular Sanctions
Recognition of truth and accountability	at the earliest stage	before the first instance ruling (late recognition)	none
Nature of the sanction	restriction of freedom of movement or residence (not in a prison) *and* participation in restorative/reparative programs	deprivation of liberty (prison, jail, military or police units)	deprivation of liberty (prison or jail)
Duration of the sanction	5–8 years (for grave crimes) 2–5 years (if the participation was not essential)	5–8 years (for grave crimes) 2–5 years (if the participation was not essential)	15–20 years

Prepared by the authors.

The model of sanctions imposed by the JEP permits the deprivation of liberty in the case of alternative or regular sanctions. In any case, these sanctions of a retributive nature continue to be (rather) measures of last resort, applicable as long as the main objectives of restorative justice have

15 cf art 141 Statutory Law.
16 cf no 60 in pt 5.1.2.I. of the Final Agreement, 142–3.

not been achieved or have been insufficiently met.[17] The gradations of this sanctions regime clearly shows that the main goal is not a retributive prison sentence, but the consolidation of peace and the satisfaction of the rights of the victims with the "greatest possible restorative and reparative function for the damage caused, always in proportion to the degree of recognition of truth and accountability".[18]

The JEP will hand down its sanctions in relation to the sentencing objectives – that is, deterrence, retribution, rehabilitation and restoration – on a "case by case" basis (CC 2017: para 23, 23). Hence, the special sanctions regime is designed to motivate perpetrators to contribute to the TJ system (responding to the rights of the victims and complying with reparation as well as guarantees of non-repetition). In addition, the JEP will determine the sanctions with "the genuine intention that the convicted person will be brought to justice" (CC 2017: para 23, 23). In doing so, the JEP ensures that those responsible of the most serious crimes will be held accountable – hereby preserving an "*irreducible minimum*" of the duty to investigate, adjudicate and sanction – and thus avoiding impunity.

4. Exemption from criminal responsibility

4.1. Amnesties and Pardons

Another topic that has sparked discontent in Colombia is the treatment of amnesties and pardons. As with the sanctions, amnesties have been strongly criticized based on allegations that the JEP, by granting amnesties, would be an impunity tribunal. One of the key challenges within the framework of TJ processes is how to confront the dilemma between justice and peace. A peace agreement in the context of an ongoing armed conflict is almost impossible to achieve without allowing for concessions in terms of justice. In that sense, there is an eminent political content to peace negotiations that require all parties to be willing to make and accept compromises. In various peace negotiations (at a global level and in Colombia), amnesties have proven to be a successful tool to achieve this

17 Nevertheless, in those cases the duty to contribute to the clarification of truth, the reparation of the victims and the guarantee of non-repetition is maintained, cf paragraph of transitory art 18 of LA 1/17.

18 See no 60 in pt 5.1.2.I. of the Final Agreement, 142; transitory art 13 of LA 1/17 and CC, Judgment C-674, para 5.3.2.4.2.

willingness to compromise, since, by preventing the prosecution of certain conducts, they create a relevant incentive to continue the negotiations (Tarapués Sandino 2022: 65–66).[19] While the higher objective of achieving peace justifies these reasons of practical feasibility, the State's obligations to investigate and prosecute grave human rights violations must not be forgotten.

In light of these conflicting perspectives, international law has developed a two-tiered approach that distinguishes between absolute and conditional amnesties (Ambos 2021: 123ff.). (Inadmissible) *absolute amnesties* prohibit any investigation and impede victims and their families from identifying the perpetrators, knowing the truth, or receiving reparation. Thus, they obstruct access to justice (Ambos 2018a: 121).[20] While that kind of *carte blanche* has been banned in international law, *conditional amnesties* are permitted. The latter do not automatically exempt from punishment. Instead, these amnesties condition the benefit on certain acts, such as, for example, acknowledgment of responsibility, full disclosure of the crimes committed, and remorse on the part of the recipients (Ambos 2009: 71).[21] Additionally, international law does not allow conditional amnesties for serious crimes, such as war crimes or crimes against humanity (Ambos 2018a: 127–8).[22] In other words, international law opts for a conciliatory approach that promotes an expeditious and peaceful resolution (by permitting amnesties) and, at the same time, recognizes the State's obligation to protect the rights of the victims (by prohibiting amnesties

19 See CC, Judgment C-674, para 5.3.2.4.2., which states that "the flexibility in punitive standards constitutes a condition for the viability of negotiations with illegal armed groups, since they would not be willing to consider disarmament if it would bring a severe and strict application of criminal law". Regarding negotiations with the ELN, see also Redacción Paz, *El Tiempo* (2019).

20 A classic example of an absolute amnesty in the Latin American context is Chilean Decree 2191 from 1978, which gave amnesty to "perpetrators, accomplices or accessories" extending it to all crimes committed between 11 September 1973—the day of the coup d'état of General Augusto Pinochet—and 10 March 1978, without making any distinction between the seriousness of the common crimes committed.

21 The most famous example of such an amnesty is the case of South Africa. According to the Truth and Reconciliation Act from 19 July 1995, an amnesty can be granted by a specific Amnesty Committee under the condition that (among other things) the applicant reveals all the facts committed and these can be considered political crimes, see Ambos (2018a), 125–6.

22 The IACHR declared that international crimes (such as crimes against humanity, war crimes or genocide) "are crimes for which amnesties cannot be granted", IACHR, *Caso Almonacid Arellano y otros vs. Chile*, para 114.

for severe crimes and restricting the concession of amnesties to less serious crimes and only under certain conditions) (Ambos 2021: 123).

The JEP's normative framework carefully considers these nuances: it avoids absolute amnesties and instead ensures that the recipients of amnesties or pardons assume responsibility and fulfil specific conditions. In addition, the JEP's framework guarantees that those most responsible of serious crimes (such as crimes against humanity and war crimes) will under no circumstances benefit from amnesties or pardons.[23] Consequently, the JEP can only grant amnesties for certain crimes (for example, political crimes such as rebellion, sedition, or so-called connected crimes such as deaths in combat) and subject the exemption from liability to specific conditions. Thus, the legal framework of the JEP applies a complex system for granting amnesties going beyond the minimum standards of international law.[24] In addition, the fact that the JEP's amnesty regime is neither general (as it excludes specific crimes from the granting of amnesties) nor unconditional (as it establishes mandatory conditions) favors the legitimacy and legality of the Colombian model in terms of amnesties.

4.2. Waiver of criminal prosecution

Another fundamental aspect related to allegations of impunity is the waiver of criminal prosecution. As with amnesties or pardons, this legal figure constitutes a particular criminal proceeding that extinguishes liability and criminal sanctions.[25] Likewise, it does not apply to serious crimes (such as war crimes or extrajudicial executions), limiting its scope of application to certain crimes (ICJ 2019: 103).[26] Additionally, the waiver of criminal prosecution does not exempt recipients from the duty of contributing to the SIVJRNR measures.[27] Hence, the figure of waiver of criminal prosecution is similar to the amnesties regime. However, it differs in that the waiver of

23 Paragraph of Art 23 of Law 1820 from 2016, Amnesty Law (henceforth Amnesty Law). For a detailed analysis see Ambos and Cote (2019).

24 The JEP's normative framework does not only prohibit the granting of amnesties for international crimes, but also for other crimes, such as taking hostages, enforced disappearance and sexual violence (which may amount to international crimes, but do not necessarily qualify as such), cf paragraph of art 23 Amnesty Law.

25 cf art 44ff. Statutory Law; arts 44ff. Amnesty Law.

26 cf art 45 Statutory Law; art 46 Amnesty Law.

27 cf art 49 Statutory Law; art 50 Amnesty Law; no 50f. in pt 5.1.2.III. of the Final Agreement, 137.

criminal prosecution was designed principally for the State's agents while amnesties were created to benefit FARC-EP ex-combatants (ICJ 2019: 98ff.; ICJ 2021: 2).[28] Accordingly, the JEP's normative framework allows those perpetrators who cannot access the recourse of amnesties or pardons the same opportunity to benefit from a special treatment—provided that they tell the truth and contribute to the reparation of the victims (ICJ 2019: 99; IFIT 2018: 223).

The idea behind the strategy of offering waivers of criminal prosecution is, in some cases, that it permits to concentrate efforts in the investigation and prosecution of the most responsible perpetrators and of the most serious crimes. The JEP's objective is not to try all individuals that have committed crimes in the context of the armed conflict. The pragmatical reason for this is that the JEP would not have the capacity to deal with all the cases that occurred during the armed conflict.[29] Previous attempts to combat impunity have shown that a strategy directed at prosecuting all individual crimes has little chance of success and could lead to "*de facto impunity*".[30] Furthermore, understanding the criminal structures and patterns as a source and cause of the conflict is indispensable to unravel the complexity of the armed conflict.[31] The JEP's design is a result of the lessons learned from past mistakes. It focuses its investigative efforts on specific suspects or criminal organizations based on its prioritization and selection criteria (JEP, Chamber of Recognition of Truth and Responsibility and Determination of Facts and Conducts [hereinafter SRVR] 2018b; see ICJ 2019: 6). That is why crimes against humanity and war crimes, among others, are excluded from the waiver of criminal prosecution. Accordingly, the JEP only deals with those most responsible for committing the most serious crimes in order to uncover the major criminal patterns.[32]

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28 cf art 44 Amnesty Law.

29 CC, Judgment C-674, para 5.2.4.2.5.

30 ibid, para 4.3.2.4.2.

31 ibid.

32 CC, Judgment C-080 from 2018: "*(…) selection as a principle constitutes a general and abstract mandate that applies to the Special Jurisdiction of Peace, whose objective is to allow such a jurisdiction, given the massiveness of the events that have taken place in the context of the armed conflict, to centre its efforts in the criminal investigation of the most responsible perpetrators of all the crimes which have the connotation of crimes against humanity, genocide, or war crimes committed systematically, as required by transitory article 66. On the other, the selection criteria qualify as policy guidelines through which the JEP must fulfil such a mandate*" (emphasis added).

5. The JEP's conditionality regime

As mentioned above, in order to obtain benefits (that is, favorable special penal treatment such as special sanctions, alternative sanctions, pardons, amnesties or waiver of criminal prosecution) the recipients must effectively contribute to the whole truth, to the satisfaction of the victims' rights, to reparation and guarantees of non-repetition.[33] Failure to comply with these conditions leads to the loss of benefits.[34] The conditionality regime is marked by the principles of progressiveness, proportionality, and comprehensiveness which require stricter conditions for more serious crimes and greater benefits.[35] There is a correlation between the seriousness of the conduct and the severity of the conditionality regime: the more serious and representative the crimes are, the more demanding the conditionality regime is for the beneficiaries (see Tarapués 2019: 44, 46).[36]

A central challenge to this justice model that highly relies on conditionality is that regime's effective enforcement. The normative framework of the JEP comprehensively defines the criteria used to assess breaches to the system of conditions and determines their effects.[37] If the JEP is unable to guarantee compliance with the conditions imposed on individuals in exchange for favorable penal treatment, this model would lack foundation and lose legitimacy. In that case, restrictions in terms of justice would gain nothing in return with regards to truth, reparation of victims and non-repetition. In other words, there would be no substantial gain concerning the objectives pursued with the TJ instruments.[38] In order to avoid this, the JEP can resort to a special proceeding in cases of non-compliance (Castro Cuenca 2022: 101–102).[39]

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33 See transitory art 5 (sub-s 8) and transitory art 11 of art 1 LA 1/17; CC, Judgment C-674, para 5.3.2.4.2.

34 See transitory art 5 (sub-s 8) of art 1 LA 1/17 according to which the special treatment is lost when false information has been maliciously provided, and when "any of the conditions of the System have been breached". See also Representative of the UN High Commissioner for Human Rights in Colombia (2017).

35 Similarly, "[t]he degree of voluntary contribution of each individual or collective to the truth will be in relation to the treatment received in the JEP", cf art 20 sub-s 5 of Statutory Law.

36 JEP, Tribunal for Peace (2019), Judgment TP-SA-SENIT 01, para 233; CC (2018), Judgment C-080, pt 4.1.5.3.

37 Art 67 RPE; transitory art 12 of art 1 LA 1/17.

38 See CC, Judgment C-674, para 5.3.2.4.2.

39 Art 67 RPE.

So far, the JEP has shown that it strives to respond to non-compliance with the conditions imposed under the conditionality regime, especially in cases where the applicant:

- does not present the monitoring report within the period granted by the JEP or does not assist programmed testimonies without proof of justification (e.g., Hernán Velásquez alias 'El Paisa'[40] and Seuxis Solarte alias 'Jesús Santrich'[41]),
- does not show sufficient commitment to contribute to the truth and to satisfy the victims' rights (e.g., General Mario Montoya (JEP, SRVR 2020)[42]), or
- publicly expresses dissociation from and regret about his previous collaboration with the JEP and forms a new armed group (e.g., Luciano Arango alias 'Iván Márquez'[43]).

As a consequence of such non-compliance, the JEP can deny beneficial treatment (such as conditional release), activate the ordinary (adversarial) criminal procedure or even initiate a process of exclusion from the jurisdiction (for example, in the cases of 'Santrich' and 'Márquez', for having joined the FARC dissidents)[44]. While the JEP needs to respond to such cases of non-compliance with the conditionality regime in line with due process and an otherwise legally sound procedure,[45] this must be done with determination to avoid creating a legal vacuum that leads to impunity and involves the loss of trust from the part of the victims and the society in general.

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40 JEP, SRVR (2019): Ruling 061.

41 JEP, SRVR (2019): Ruling 178. See also JEP (2019c).

42 JEP, SRVR (2020). Although the victims have demanded repeatedly the exclusion of General Montoya from the JEP for his failure to comply, it is not yet clear whether the General's attitude can be considered a serious failure to comply at this moment of voluntary testimonies. The JEP's SRVR denied the victims' request on the expulsion of General Montoya on 16 December 2020, based on procedural arguments that did not yet allow the Chamber to take a decision on the matter, see *Semana* (2020a). It will only be able to do so after the process of contrasting the entire body of evidence has been finalized, cf *infobae* (2021).

43 JEP, SRVR (2019): Ruling 076. See also JEP (2019a); JEP (2019f).

44 JEP, Tribunal for Peace (2019): Ruling TP-SA-289 (excludes Seuxis Paucias Hernández 'Santrich') and Ruling TP-SA-288 (excluding Hernán Darío Velásquez 'El Paisa'). See also JEP (2019b); Castro Cuenca (2022): 105.

45 art 21 of Statutory Law. It should be noted that an expulsion from the JEP must be based on exceptional circumstances, such as abandoning the peace process or taking up the arms again, as set out by the CC in its judgment C-080 of 2018.

6. International Criminal Court: The International Monitoring Mechanism

The International Criminal Court (ICC) was created to ensure that "the most serious crimes of concern to the international community as a whole" are not left unpunished.[46] As Colombia is a State Party,[47] the ICC monitors the treatment of crimes within its competence[48] that were committed in the context of the Colombian armed conflict, above all regarding possible omissions that could lead to impunity.[49] In this sense, the Office of the Prosecutor (hereinafter OTP) of the ICC periodically examines if Colombia is fulfilling its obligation to deal with these crimes genuinely (see ICC, OTP 2012; see also ICC, OTP 2013–2020; and ICC, OTP 2021: para. 16).

Although the OTP has reiterated on several occasions that it supports the Colombian TJ process and especially the JEP, it has also highlighted the importance of developing effective and rigorous measures to implement and monitor the sanctions imposed (ICC, OTP 2019: 133; ICC, OTP 2020; ICC, OTP 2018: para 165; see also ICC OTP 2021: para. 42). Regarding the constitutional reform project presented by the Democratic Centre party ("Centro Democratico"), former Deputy Prosecutor James Stewart warned the Colombian Government to "Let the SJP [JEP] judges to do their job" in order to ensure "peace with justice" (International Center for Transitional Justice – ICTJ 2018; see also ICC OTP 2021: para. 16). Likewise, the OTP has expressed concerns as to whether the JEP will be able to hold commanders accountable since the respective provision that the JEP's judges will apply contains an ambiguous concept of command responsibility.[50] With regard to the latter, the JEP has provided some clarification in its recent "indictment" in the context of macro case 003, charging several

46 Rome Statute, Preamble.

47 Colombia deposited its ratification instrument on the 5 August 2002, thus the Statute entered into force on the 1 November 2002 (art 126(2) of the Rome Statute). For the internal context, see Colombian Law 742/2002 adopting the Rome Statute.

48 See arts 5–8*bis* of the Rome Statute (genocide, crimes against humanity, war crimes, crime of aggression).

49 The Colombian situation is under preliminary examination since June 2004, see ICC, 'Situations and Cases under Preliminary Examinations Colombia'.

50 cf art 24 LA 1/17. See ICC, OTP (2018), 'Report', para 165. Although the ICC OTP did not express its concerns regarding this matter in its last 'Reports on the preliminary examination of the situation in Colombia' in 2019 and 2020, the question of what definition the JEP will apply continues to be a constant concern, cf. Ambos and Aboueldahab (2021); see also ICC, OTP (2021), para. 16.

army officials with extrajudicial killings (so-called "false positives") and interpreting the figure of command responsibility in line with international standards, in particular Art. 28 ICC Statute, thus ensuring the prosecution of commanders also with regard to the Armed Forces.[51] Notwithstanding this recent positive development, if the JEP (and Colombia in general) is not capable of prosecuting the most serious crimes committed in the context of the armed conflict, the preliminary examination regarding the Colombian situation might be turned into a formal investigation to ensure that there is no impunity (Eskauriatza 2020: 199; Ambos and Aboueldahab 2019).[52]

7. General Assessment

7.1. General remarks

Since World War II, the establishment of international criminal tribunals has tended to create overly high and, at times, inaccurate expectations among the affected populations (Milanovic 2020: 261ff; Damaška 2007: 341ff.). The JEP faces the same problem with regard to victims, former members of the FARC-EP, members of the armed forces and citizens in general. The sensation of disappointment or, even worse, a simulated justice, can only be countered by a strategy determined to repeatedly clarify and explain the mandate and the limitations of the JEP to create more realistic expectations (ICJ 2019: 83). Hence, both the Colombian State and the JEP (along with the SIVJRNR) have the responsibility to implement a strategy of expectation management. In addition to false ideas concerning amnesties, pardons and the JEP's sanctions as well as conditionality regime, expectations should be also countered with regard to the length of the proceedings.

The JEP's mode of operation is complex and hence it will take longer to deliver judgments. This is inherent in the nature of the JEP, as it deals with several large-scale cases whose scope and magnitude are reflected in the figures: after three years of operation, the JEP has conducted 138 hearings and adopted 44.853 court decisions (JEP 2021); almost 13.000 individuals have submitted to the JEP (9806 former FARC combatants, 3007 members of the Armed Forces and 141 State Agents (JEP 2021; see

51 JEP, SRVR (2021): Ruling 125, section E.2.3., especially paras. 699–701.
52 cf art 17, para 1(b) of the Rome Statute.

also ICC, OTP 2020: para. 111)) and more than 260 thousand victims have been accredited (JEP 2020a). This does not represent minor work. Another factor that slowed down the functioning of the JEP was the delay in adopting the necessary provisions for its operation: Although the JEP started to function in March 2018, the Rules of Procedure (Law 1922) were approved only in July 2018 and the Statutory Law (Law 1957) was not issued until June 2019. Hence, the mere fact that it takes the JEP longer than expected is not *per se* a sign of impunity. Rather, it shows the extensive and complex workload that the JEP has to deal with and the political difficulties it encountered during its founding process (*Semana* 2020; Ambos and Abouel-dahab 2019).

7.2. The JEP does not aggravate the situation of impunity in Colombia

Another claim that is often made is that the general situation of impunity in Colombia has worsened with the JEP. This assertion overlooks two important aspects: First, there was already a high level of impunity concerning the crimes committed in the context of the armed conflict due to the alleged "lack of guarantees of impartiality within traditional State bodies".[53] Hence, the JEP deals with cases that have gone unpunished because the traditional justice system has not been able to resolve them. It thus contributes to close the already existing impunity gaps (see, for example, JEP 2020b). Second, the ordinary justice system continues to have an essential role in ensuring accountability. Those cases that do not fall within the competence of the JEP based on the prerequisites contemplated in Legislative Act 01 of 2017 will remain with the ordinary justice system. Indeed, the Attorney General (Fiscalía General de la Nación) can continue investigating and prosecuting cases for up to three months before issuing conclusions in each large-scale case.[54] Moreover, third-party civilians, in line with a CC judgement,[55] only have a right but not obligation to submit

53 CC, Judgment C-674, para 5.3.1.1.

54 See also art 79(j) Statutory Law.

55 CC, Judgment C-674, arguing at para. 5.5.2.2. that third parties' voluntary submission to the JEP does not violate their right to a natural judge since this submission "results precisely from their willingness to submit themselves to a jurisdictional authority that is distinct from the ordinary authorities of the State and that offers them sufficient guarantees", adding at para. 5.5.2.3. (last subparagraph) that the JEP's "framework […] offers symmetrical and equivalent guarantees" that do not diminish "procedural and substantive guarantees".

themselves to the JEP. Since the JEP deals exclusively and provisionally with acts committed in the context of the armed conflict, it does not seek – and would not be able to – substitute the ordinary justice system.[56]

7.3. The JEP is not an isolated institution

It should also be noted that the JEP is not an isolated mechanism, but is interconnected with other institutions: First, it is part of the SIJVRNR that consists of the Commission for the Clarification of Truth, the Special Unit for the Search of Missing Persons and the other bodies that compose the system (see ICJ 2019: 6). Furthermore, both the Colombian Congress and the President approved the JEP's statutory laws, and the CC has made several clarifications regarding its competence and limitations. In other words, the JEP is not solely responsible for achieving the objectives of TJ, nor is the SIJVRNR; but rather it is the joint responsibility of the State and the Colombian society as a whole (*Semana* 2020). Additionally, the proceedings of the JEP can be reviewed by the CC under the mechanism of *tutelas*[57] which have been applied since the CC's Judgment C-674 in 2017.[58] Therefore, the JEP will only be able to meet expectations if all Colombian institutions (including those created with the Victims and Land Restitution Law) work together and in a coordinated manner. To this end, State authorities (and especially the government) have first and foremost the obligation to support the TJ process. In fact, the current government is obliged to comply with the regulations of the Final Agreement (even though it was an agreement made by the previous government)

56 See pt 5.1.b. of the Final Agreement, 112.

57 A *tutela* is a constitutional injunction that aims to protect fundamental constitutional rights when they are violated or threatened by the action or omission of any public authority; it is a mechanism incorporated in art 86 of the Colombian Constitution.

58 See also CC, Judgment C-080 from 2018: "The selection of *tutelas* for review is a power exercised by the court in consistent exercise of its duties to protect the integrity and supremacy of the Political Constitution. In pursuit of this objective, it has the sole exclusive and excluding competency to exercise control of the actions of *tutela* by reviewing the ones that are pronounced in the constitutional jurisdiction to which all the judges of the Republic belong and of which this corporation is the closing body, following the principle of "unity of constitutional jurisdiction". This control takes on greater importance in the framework of the SIVJRNV, since the only mechanism provided for the control of the orders issued by the JEP was the action of *tutela*".

since it entails an obligation of the Colombian State as an international legal subject, regardless of whether it is politically convenient for the government of the day.[59] Hence, some of the positions assumed by the present government regarding the JEP do not seem adequate.[60] Instead it is to be expected that the government recognizes its obligation to promote the implementation of the Final Agreement and abstains from obstructing the JEP's work in the future. It is equally important that the Office of the Attorney General and the other national bodies fully cooperate with the JEP (JEP 2019a; ICC, OTP 2020; see also ICJ 2019: 7–9).

7.4. The need for critical monitoring

Beyond expectation management and the need to establish joint efforts among all institutions involved, the JEP needs close monitoring. While allegations of impunity about the JEP's normative framework are often based on overly high expectations or misperceptions, the institution does indeed face a number of challenges in terms of fulfilling its mandate. This implementation process undoubtedly requires critical accompaniment. At this point, it cannot be predicted with certainty whether the JEP will be able to guarantee the necessary enforcement and monitoring of the sanctions imposed, the provisional benefits granted, and the conditionality regime. These and other future developments, which, at worst, could eventually impede the fulfilment of the JEP's mandate, require the support as well as critical and constructive monitoring of civil society, State institutions, academia, and the international community.

59 cf Legislative Act 02 from 2017 which constitutionally safeguarded the Final Agreement and turned it into a criterion of legal interpretation.

60 For example, with regard to the objections the government made to the JEP's Statutory Law and which caused immense penal uncertainty at that moment, see Secretary-General's Special Representative Warns against Reopening Colombia's Final Peace Agreement in Climate of Uncertainty, UN Doc. SC/13778 (2019); also Ambos and Aboueldahab (2019).

References

Literature

Ambos, Kai (2021): 'Transitional Justice in Colombia. The Amnesty Law 1820 of 2016 and the international legal framework', in: Jorge Luis Fabra-Zamora, Andrés Molina-Ochoa, Nancy C. Doubleday eds., *The Colombian Peace Agreement. A Multidisciplinary Assessment* (123–140). London: Routledge.

Ambos, Kai (2018a): 'La Ley de Amnistía (Ley 1820 de 2016) y el marco jurídico internacional', in: Kai Ambos, Francisco Cortés Rodas, John Zuluaga, eds., *Justicia transicional y Derecho Penal Internacional* (119–166). Bogotá: Siglo del Hombre Editores [https://cedpal.uni-goettingen.de/data/publicaciones/2018/Ambos_Ley_de_Amnista_in_Ambos_et_al_Justicia_transicional_y_DPI_2018.pdf] <29.06.2021>.

Ambos, Kai (2018b): 'Principle 19 – Duties of States with Regard to the Administration of Justice', in: Frank Haldemann, Thomas Unger, Hg., *The UN Principles to Combat Impunity – A Commentary* (205–216). New York: OUP.

Ambos, Kai (2009): 'El marco jurídico de la justicia de transición', in: Kai Ambos, Ezequiel Malarino, Gisela Elsner, eds., *Justicia de Transición. Informes de América Latina, Alemania, Italia y España* (23–129). Montevideo: Fundación Konrad-Adenauer [http://cedpal.uni-goettingen.de/data/investigacion/GLEDPI/publicaciones/Justicia%20de%20Transicion.pdf] <29.06.2021>.

Ambos, Kai (2003): 'Sobre los fines de la pena al nivel nacional y supranacional', in: *Revista de Derecho Penal y Criminología 12*, 191–211 [http://revistas.uned.es/index.php/RDPC/article/view/24847] <29.06.2021>.

Ambos, Kai and Aboueldahab, Susann (2021): 'Command responsibility and the Colombian peace process', in: Khalid Ghanayim, Yuval Shany, eds., *The Quest for Core Values in the Application of Legal Norms. Essays in Honor of Mordechai Kremnitzer*. Berlin: Springer (forthcoming).

Ambos, Kai and Aboueldahab, Susann (2018): 'Juristas extranjeros en la Jurisdicción Especial para la Paz: ¿Un nuevo concepto de Amicus Curiae?' in: Diego Tarapués Sandino, Adolfo Murillo Granados, eds., *Contribuciones al Derecho Contemporáneo. Tomo I: Derechos Humanos y Justicia Transicional* (25–46). Cali: Universidad Santiago de Cali [http://www.cedpal.uni-goettingen.de/data/publicaciones/2018/Ambos_Aboueldahab_Juristas_extranjeros_en_la_JEP_en_Contribuciones_al_Derecho_Contemporneo_pg__25-46_2018.pdf] <29.06.2021>.

Ambos, Kai and Cote Barco, Gustavo E. (2019): *Ley de Amnistías. Comentario completo y sistemático*. Temis/ CEDPAL/ CAPAZ/ KAS [https://www.kas.de/documents/271408/4530743/Comentario+completo+y+sistemático+a+la+Ley+de+Amnist%C3%ADa+colombiana.pdf/79910d44-d10f-faf3-0ebb-f15aef0b6e71?version=1.0&t=1555432143901] <29.06.2021>.

Castro Cuenca, Carlos Guillermo (2022): 'Combining the Purposes of Criminal Law and Transitional Justice in the Special Jurisdiction for Peace', in: Kai Ambos, Stefan Peters (eds.), *Transitional Justice in Colombia: The Special Jurisdiction for Peace* (85–109), Baden-Baden: Nomos.

Cote Barco, Gustavo Emilio (2020): 'El carácter dialógico del proceso con reconocimiento de responsabilidad ante la Jurisdicción Especial para la Paz: retos del derecho penal en contextos de justicie transicional', in: *Vniversitas 69* (1–30).

Damaška, Mirjan (2007): 'What Is the Point of International Criminal Justice?', in: *Chicago-Kent Law Review* 83, 329–365.

Duff, Robin A. (2011): 'Retrieving Retributionism', in: Marc D. White, ed., *Retributivism: Essays on Theory and Policy* (3–24). Oxford: OUP.

Eskauriatza, Javier S. (2020): 'The Jus Post Bellum as 'Integrity' – Transitional Criminal Justice, the ICC, and the Colombian Amnesty Law', in: *Leiden Journal of International Law 33*, 189–205.

Milanovic, Marko (2020): 'Courting Failure: When Are International Criminal Courts Likely to be Believed by Local Audiences?' in: Kevin J. Heller, Frederic Megret, Sarah Nouwen, Jens Ohlin, Darryl Robinsonet, Hg., *The Oxford Handbook of International Criminal Law* (261ff, ch 11). Oxford: OUP.

Sedacca, Nathalie (2019): 'The 'turn' to Criminal Justice in Human Rights Law: An Analysis in the Context of the 2016 Colombian Peace Agreement', in: *Human Rights Law Review 19*, 315–345.

Tarapués Sandino, Diego (2022): 'The Special Jurisdiction for Peace and Sui Generis Transitional Justice', in: Kai Ambos, Stefan Peters (eds.), *Transitional Justice in Colombia: The Special Jurisdiction for Peace* (63–83), Baden-Baden: Nomos.

Tarapués Sandino, Diego (2019): 'El régimen de condicionalidad y el sistema integral de justicia transicional', in: *Revista Derecho: Debates & Personas 19*, 40–48.

Teitel, Ruti G. (2000): *Transitional Justice*. New York: OUP.

Urban Walker, Margaret (2006): 'Restorative Justice and Reparations', in: *Journal of Social Philosophy 37*, 377–395.

Zehr, Howard (1990): *Changing Lenses: A new Focus for Crime and Justice*. United States: Herald Press.

Blogposts, Newspaper Articles and Varia:

Ambos, Kai and Aboueldahab, Susann (2019): 'Colombia: Time for the ICC Prosecutor to Act?', in: EJIL:Talk!, 02.04.2019 [https://www.ejiltalk.org/colombia-time-for-the-icc-prosecutor-to-act/] <29.06.2021>.

Bermúdez Liévano, Andrés (2021): 'A first in Colombia: Eight Farcs charged with war crimes and crimes against humanity', in: JusticeInfo.net, 02.02.2021 [https://www.justiceinfo.net/en/69281-first-colombia-eight-farcs-charged-war-crimes-crimes-against-humanity.html] <10.08.2021>.

Infobae (2021): 'Víctimas de falsos positivos reiteran su rechazo a la declaración del general Mario Montoya ante la JEP', 05.04.2021 [https://www.infobae.com/america/colombia/2021/04/06/victimas-de-falsos-positivos-reiteran-su-rechazo-a-la-declaracion-del-general-mario-montoya-ante-la-jep/] <29.06.2021>.

Institute for Integrated Transitions (IFIT) (2018): 'Los debates de La Habana: una mirada desde adentro' [https://ifit-transitions.org/publications/los-debates-de-la-habana-una-mirada-desde-adentro/] <29.06.2021>.

International Center for Transitional Justice (ICTJ) (2018): 'ICC Deputy Prosecutor Addresses Forum on Colombia's Special Jurisdiction for Peace', 20.11.2018 [https://www.ictj.org/es/node/24692] <29.06.2021>.

Jurisdicción Especial de Paz (2019a): 'ICC Deputy Prosecutor James Stewart' [https://soundcloud.com/jepcolombia2019/icc-deputy-prosecutor-james-stewart] <29.06.2021>.

León, Juanita (2016): 'La fórmula desmenuzada para armar el Tribunal de Paz', in: *La Silla Vacía*, 12.08.2016 [https://lasillavacia.com/historia/la-formula-desmenuzada-para-armar-el-tribunal-de-paz-57525] <29.06.2021>.

Redacción Paz (2019): 'JEP es importante para garantizar que no haya impunidad: Noruega', in: *El Tiempo*, 26.03.2019 [https://www.eltiempo.com/justicia/jep-colombia/la-jep-es-importante-para-garantizar-que-no-haya-impunidad-canciller-noruega-342230] <29.06.2021>.

Representative of the UN High Commissioner for Human Rights in Colombia (2017): 'La JEP no es una fiesta de impunidad', interview with Todd Howland, 16.04.2017 [https://www.youtube.com/watch?v=wiy8rivZwbI] <29.06.2021>.

Semana (2020): 'Fosa de Dabeiba constituye una contribución inmensa a la verdad histórica', in: *Semana*, 18.02.2020 [https://www.semana.com/nacion/articulo/la-fosa-de-debeiba-constituye-una-contribucion-inmensa-a-la-verdad-historica-kai-ambos/652458] <29.06.2021>.

Semana (2020a): 'La JEP se rehúsa a expulsar al general (r) Mario Montoya: ¿por qué?', 17.12.2020 [https://www.semana.com/nacion/justicia/articulo/la-jep-se-rehusa-a-expulsar-al-general-r-mario-montoya-por-que/202029/] <29.06.2021>.

Suárez, Carlos (2019): 'La JEP es impunidad', in: *La Silla Vacía*, 23.02.2019 [https://lasillavacia.com/silla-llena/red-caribe/historia/la-jep-es-impunidad-70192] <29.06.2021>.

Uprimny Yepes, Rodrigo and Saffon, Maria P. (2005): 'Justicia transicional y justicia restaurativa: tensiones y complementariedades', in; Dejusticia, 12.12.2005 [https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_52.pdf] <29.06.2021>.

United Nations Documents:

UN Doc SC/13778 (2019).

UN Doc A/RES/ 57/190 (2003).

UN Doc A/RES/57/228 (2002).

UN Doc S/2004/616 (2004).

UN Doc S/RES/1529 (2004).

UN Doc S/RES/1479 (2003).
UN Doc E/CN.4/Sub.2/1997/20/Rev.1 (1997).
UN Doc E/CN.4/Sub.2/8 (1993).

Judgments and Decisions:

Corte Constitucional, Judgment C-674, 14.11.2017 [https://www.corteconstitucional.gov.co/relatoria/2017/C-674-17.htm] <29.06.2021>.

Corte Constitucional, Judgment C-080, 15.08.2018 [https://www.corteconstitucional.gov.co/relatoria/2018/c-080-18.htm] <29.06.2021>.

Inter-American Court on Human Rights, *Caso de las Comunidades Afrodescendientes Desplazadas de la cuenca del Río Cacarica (Operación Génesis) vs. Colombia*, Judgment, 20.11.2013 [http://www.corteidh.or.cr/docs/casos/articulos/seriec_270_esp.pdf] <29.06.2021>.

Inter-American Court on Human Rights, *Caso Almonacid Arellano y otros vs. Chile*, Judgment, 26.09.2006 [https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf] <29.06.2021>.

Inter-American Court on Human Rights, *Caso Las Palmeras vs. Colombia*, Judgment, 06.12.2001 [http://www.corteidh.or.cr/docs/casos/articulos/Seriec_90_esp.pdf] <29.06.2021>.

Jurisdicción Especial de Paz, SRVR, 'Determinar los hechos y conductas ocurridos en el Catatumbo durante el 2007 y el 2008, atribuibles a miembros de la BRIM15, el BISAN y a terceros civiles, y ponerlos a su disposición a efectos del reconocimiento de su responsabilidad', Ruling 125, 02.07.2021.

Jurisdicción Especial de Paz, SRVR, 'Determinar los Hechos y Conductas atribuibles a los antiguos miembros del Secretariado de las FARC-EP por toma de rehenes y otras privaciones graves de la libertad, y ponerlos a su disposición', Ruling 19, 26.01.2021.

Jurisdicción Especial de Paz, TP-SA, 'Sentencia interpretativa sobre beneficios provisionales, régimen de condicionalidad y participación de víctimas', TP-SA-SENIT 1, 03.04.2019 [https://relatoria.jep.gov.co/documentos/providencias/7/2/Sentencia-interpretativa_TP-SA-SENIT-01_03-abril-2019.pdf] <29.06.2021>.

Jurisdicción Especial de Paz, TP-SA, 'Resolver el recurso de apelación formulado contra la decisión SRT-AE-030/2019 en el asunto de Seuxis Paucias Hernández Solarte', Ruling TP-SA 289, 13.09.2019.

Jurisdicción Especial de Paz, TP-SA, 'Apelación del auto 61 de 2019, proferido por la SRVR en el incidente de incumplimiento al régimen de condicionalidad (Hernán Darío Velásquez Saldarriaga)', Ruling TP-SA-288, 13.09.2019.

Jurisdicción Especial de Paz, SRVR, 'Apertura del incidente de verificación del cumplimiento del régimen de condicionalidad al compareciente Seuxis Paucias Hernández Solarte', Ruling 178, 06.08.2019.

Jurisdicción Especial de Paz, SRVR, 'Apertura del incidente de verificación de cumplimiento del régimen de condicionalidad a Iván Luciano Márquez', Ruling 076, 29.05.2019 [https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-076_29-mayo-2019.pdf]
<29.06.2021>.

Jurisdicción Especial de Paz, SRVR, 'Decisión final en el incidente de condicionalidad del señor Hernán Darío Velásquez Saldarriaga', Ruling 061, 26.04.2019 [https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-061_26-abril-2019.pdf] <29.06.2021>.

Legislation:

Colombia. Acto Legislativo no. 01 por medio del cual se crea un título de disposiciones transitorias de la Constitución para la terminación del conflicto armado y la construcción de una paz estable y duradera y se dictan otras disposiciones. 04.04.2017.

Colombia. Acto Legislativo no. 02 por medio del cual se adiciona un artículo transitorio a la Constitución con el propósito de dar estabilidad y seguridad jurídica al acuerdo final para la terminación del conflicto y la construcción de una Paz Estable y Duradera. 11.05.2017.

Colombia. Ley No. 1957. Ley Estatutaria de la Administración de Justicia en la Jurisdicción Especial para la Paz. 06.06.2019.

Colombia. Ley No. 1922 por medio del cual se adoptan unas reglas de procedimiento para la jurisdicción especial para la paz. 18.07.2018.

Colombia. Ley No. 1820. Ley de Amnistía. 30.12.2016.

Colombia. Ley No. 742 por medio de la cual se aprueba el Estatuto de Roma de la Corte Penal Internacional, hecho en Roma, el día diecisiete (17) de julio de mil novecientos noventa y ocho (1998). 05.06.2002.

American Convention on Human Rights. 22.11.1969 (effective 18.07.1978).

Rome Statute of the International Criminal Court (ICC). 07.07.1998 [https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf] <29.06.2021>.

Protocol II Additional to the Geneva Conventions of 12 August 1949. 08.06.1977.

Other Sources:

Corte Constitucional (2017): 'Comunicado No. 55', 14.11.2017 [https://www.corteconstitucional.gov.co/comunicados/No.%2055%20comunicado%2014%20de%20noviembre%20de%202017.pdf] <29.06.2021>.

Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (2016) [https://colombia.unmissions.org/en/file/2961/download?token=0BXJsEJJ] <29.06.2021>.

International Commission of Jurists (2021): 'Boletín #38 del Observatorio sobre la JEP. Renuncia a la persecución penal y máximos responsables en la JEP', 24.06.2021.

International Commission of Jurists (2020): 'Boletín #14 del Observatorio sobre la JEP. Los trabajos, obras y actividades con contenido reparador – restaurador en la JEP', 28.05.2020.

International Commission of Jurists (2019): 'Colombia: Jurisdicción Especial para la Paz, análisis a un año y medio de su entrada en funcionamiento, June 2019' [https://www.icj.org/wp-content/uploads/2019/06/Colombia-Jurisd-para-la-paz-PUBLICATIONS-Reports-Fact-finding-mission-report-2019-SPA.pdf] <29.06.2021>.

International Criminal Court, Office of the Prosecutor (2021): 'Situation in Colombia. Benchmark Consultation' [https://www.icc-cpi.int/itemsDocuments/20210615-COL-Benchmarking-Consultation-Report-eng.pdf] <29.06.2021>.

International Criminal Court, Office of the Prosecutor (2020): 'The Office of the Prosecutor concludes mission to Colombia' [https://www.icc-cpi.int/Pages/item.aspx?name=pr1510] <29.06.2021>.

International Criminal Court, Office of the Prosecutor (2013–2020): 'Reports on Preliminary Examinations in Colombia', 25.11.2013, 02.12.2014, 12.11.2015, 14.11.2016, 04.12.2017, 05.12.2018, 05.12.2019, 14.12.2020 [https://www.icc-cpi.int/colombia] <29.06.2021>.

International Criminal Court, Office of the Prosecutor (2012): 'Situation in Colombia Interim Report' [https://www.icc-cpi.int/nr/rdonlyres/3d3055bd-16e2-4c83-ba85-35bcfd2a7922/285102/otpcolombiapublicinterimreportnovember2012.pdf] <29.06.2021>.

International Criminal Court: 'Situations and Cases under Preliminary Examinations Colombia' [https://www.icc-cpi.int/colombia] <29.06.2021>.

Jurisdicción Especial de Paz (2021): 'JEP en cifras' [https://www.jep.gov.co/jepcifras/JEP%20en%20cifras%20-%20junio%2025%20de%202021.pdf] <29.06.2021>.

Jurisdicción Especial de Paz (2020a): 'Naciones Unidas destaca la acreditación de más de 260 mil víctimas en la JEP' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/Naciones-Unidas-destaca-la-acreditación-de-más-de-260-mil-v%C3%ADctimas-en-la-JEP.aspx] <29.06.2021>.

Jurisdicción Especial de Paz (2020b): 'Comunicado 038: La JEP acreditó como víctima al partido Unión Patriótica' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-acreditó-como-v%C3%ADctima-al-partido-Unión-Patriótica.aspx] <29.06.2021>.

Jurisdicción Especial de Paz, SRVR (2020): 'Comunicado 017: Comunicado a la opinión pública sobre la versión del general (r) Mario Montoya Uribe' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/Comunicado-a-la-Opinión-Pública-sobre-la-versión-del-general-(r)-Mario-Montoya-Uribe.aspx] <29.06.2021>.

Jurisdicción Especial de Paz (2019b): 'Comunicado 081: JEP abre incidente de verificación de incumplimiento del régimen de condicionalidad a Iván Luciano Márquez' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-abre-incidente-de-verificación-de-cumplimiento-del-régimen-de-condicionalidad-a-Iván-Luciano-Márquez.aspx] <29.06.2021>.

Jurisdicción Especial de Paz (2019c): 'Comunicado 132: La JEP excluye a Seuxis Paucias Hernández, "Santrich", y a Hernán Darío Velásquez, "El Paisa"' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-excluye-a-Santrich-y-a-El-Paisa.aspx] <29.06.2021>.

Jurisdicción Especial de Paz (2019d): 'Comunicado 110: La Sala de Reconocimiento ordenó abrir incidente de cumplimiento del régimen de condicionalidad a Seuxis Paucias Hernández Solarte' [https://www.jep.gov.co/Sala-de-Prensa/SiteAssets/Paginas/Comunicado-110-de-2019---Incidente-de-incumplimiento-del-régimen-de-condicionalidad-a-Seuxis-Paucias-Hernández-Solarte/110.%20Comunicado%20110%20de%202019%20-%20Sobre%20incidente%20a%20Seuxis%20Paucias%20Hernández%20Solarte-%20Julio312019.pdf#search=seuxis%20Paucias%20Hernández%20Solarte] <29.06.2021>.

Jurisdicción Especial de Paz (2019e): '"El modelo de justicia transicional de Colombia es el más completo que se ha diseñado e implementado": Thierry Cruvellier' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/-El-modelo-de-justicia-transicional-de-Colombia-es-el-mas-completo-que-se-ha-diseñado-e-implementado--Thierry-Cruvellier.aspx] <29.06.2021>.

Jurisdicción Especial de Paz (2019f): 'Comunicado 145: La JEP excluye de la jurisdicción especial a Iván Luciano Márquez Marín Arango, a José Manuel Sierra Sabogal y a Henry Castellanos Garzón por incumplir gravemente el régimen de condicionalidad' [https://www.jep.gov.co/Sala-de-Prensa/SiteAssets/Paginas/Comunicado-145-de-2019---La-JEP-excluye-de-la-Jurisdicci%C3%B3n-a-Iv%C3%A1n-M%C3%A1rquez,-Jos%C3%A9-Manuel-Sierra-y-Henry-Castellanos/145.%20Comunicado%20145%20de%202019%20-%20La%20JEP%20excluye%20de%20la%20Jurisdicci%C3%B3n%20a%20M%C3%A1rquez,%20Sierra%20y%20Castellanos.pdf] <29.06.2021>.

Jurisdicción Especial de Paz, SRVR (2018a): 'JEP abre incidente de verificación de cumplimiento a Hernán Darío Velásquez' [https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-abre-incidente-de-verificación-de-cumplimiento-a-Hernán-Dar%C3%ADo-Velásquez.aspx] <29.06.2021>.

Jurisdicción Especial de Paz, SRVR (2018b): 'Criterios y Metodología de Priorización de Casos y Situaciones' [https://www.jep.gov.co/Documents/CriteriosYMetodologiaDePriorizacion.pdf] <29.06.2021>.