

The Challenges of Transitional Justice from an Afro-Colombian Perspective

Between August and September 2020, the Transitional Justice team of ReD organised two online dialogues that addressed the perspectives of Afro-Colombian social leaders on transitional justice. We discussed the three regional cases currently under the Special Jurisdiction for Peace (JEP): Case 002 focused on Nariño, Case 004 on Urabá, and Case 005 on Cauca and Valle del Cauca; and what the leaders considered to be the JEP's greatest challenges. This snapshot gathers some of the reflections, concerns, and proposals that arose during those events.

Progress

Leaders acknowledge the efforts made by the JEP to go to the regions and try to understand the needs regarding collective protection for the communities involved in the cases. They welcome the adoption of precautionary measures to protect them and to guarantee their participation.

During the events, social leaders also welcomed the JEP's recognition of the territory as a victim and a subject of law. The JEP has used what was established by Decree-Law 4633 of 2011 that developed a victims and territorial rights restitution public policy for Indigenous Peoples, as well as the jurisprudence innovations from the Constitutional Court regarding the recognition of natural ecosystems and ethnic territories as subjects of rights.¹ In Case 002, the JEP accredited the Katsa su indigenous land of the Awa people as a victim.

Furthermore, leaders reminded the audience that the participation of ethnic authorities is a fundamental pillar of peacebuilding. Ethnic populations have imparted restorative justice in their lands since ancestral times. Their knowledge and experience can be a key contribution to the sentences that the JEP is going to impose,

1. The Constitutional Court in its Sentence T 622 of 2016 acknowledged the Atrato river as subject of rights and victim of mining exploitation. The Court also acknowledged and reminded the importance of these ecosystems in the close relationship between the lands and the survival of ethnic populations.



and to protect and guarantee the rights of victims.

Concerns

Despite the innovations of the transitional justice system and the progress made by the JEP, concerns remain for Afro-Colombian social leaders. The main one is that the transitional justice institutions are designed for a post-conflict phase that still does not exist.

The leaders called for a revision of the methodology for selecting ethnic cases, especially regarding how regions are prioritised. They insisted on the need to understand as a whole the territories and the violations towards them, instead of taking regional administrative divisions as guidelines. Some territories that have been severely affected have so far been excluded from the cases, despite being part of the same context of violations committed during the armed conflict. What is more, taking the territories as a whole can encourage broader participation and a better handling of cases.

On a structural level, the speakers pointed out that the JEP, being a product of Colombian society, does not escape structural racism. The fact that some of the magistrates are part of indigenous communities is not enough to guarantee the implementation of an ethnic focus. The JEP faces challenges to overcome racist practices that are structurally embedded in Colombian institutions, and to advance in the recognition of diverse needs and perspectives.

Steps forward

The violence that Colombia is suffering right now continues to affect the territories and the life within them. This means that, in the words of Francia Márquez, we are destroying the Big House. A common statement from the leaders is that 'we cannot move forward in the middle of a war'.



Rodeemos el Diálogo



@RodeemosDialogo



@RodeemoselDialogo



Rodeemos el Diálogo

To create trust among institutions and communities, they ask for a permanent presence of civil authorities, and not just military ones. To take back control from armed groups, institutions, including the Public Ministry, need to have a permanent presence and so be able to guarantee the participation of victims.

Another proposal is to prioritize the macro-cases at a national level, instead of a regional level, and divide those cases by chapters, according to the violations that the JEP investigates. For instance, a national macro-case that deals with the victimization of Afro-Colombian communities could be opened, with specific chapters about violations in terms of the environment and land, as well as grave violations to human rights like forced disappearances, forced recruitment, and gender-based violence. In that way, violations would be assessed in a more comprehensive manner.

Building peace and overcoming structural racism in Colombian society must be a joint effort. Recognising the existence of racist attitudes and views is a necessary first step towards understanding the racist and colonial dimensions of the Colombian armed conflict. This would be a good starting point to advance in the reparation of the historic violations suffered by Afro-Colombian populations. Racial justice will allow society to comprehend part of the causes of the armed conflict and enhance a collective dialogue that can contribute to repairing our fraternal and family relations, not only among humanity, but also with the planet.

Embrace Dialogue salutes the acknowledgment that Afro-Colombian communities have made regarding the work of the JEP. We share the concerns regarding participation and guarantees for Afro-Colombian populations, and also the need for the JEP to assess and transform the racist practices that institutions tend to reproduce.



Rodeemos el Diálogo



@RodeemosDialogo



@RodeemoselDialogo



Rodeemos el Diálogo