

Human Rights Centre Clinic

Environmental crimes as war crimes in the context of the Colombian armed conflict

Partner: Colombian Special Jurisdiction for Peace

About

The Colombian Special Jurisdiction for Peace (JEP for its acronym in Spanish) was set up by the peace agreement between the Colombian Government and the FARC guerrilla in 2016. It aims to administer transitional justice in Colombia and deal with crimes committed in the context of the armed conflict up until December 2016.

Project overview

During the Colombian armed conflict, a lot of damage was done not just to individuals and communities, but also to the environment, including rivers, moorlands and protected areas. In 2022, the majority of the Panel for Acknowledgment of Truth and Recognition of the Special Jurisdiction for Peace charged several members of the FARC guerrilla with having committed the war crime of harm to the environment. This was decided by a small majority of 4 magistrates in favour and 3 magistrates dissenting, while some members of the majority submitted concurring opinions with regard to the question of the existence and scope of crimes against the environment as a war crime.

The aim of the Human Rights Centre Clinic project is to provide the Special Jurisdiction for Peace, and in particular the Chamber of the Peace Tribunal deciding cases in which the accused recognised their responsibility, with an analysis of a series of open and potentially controversial questions, based on international and Colombian jurisprudence and academic literature.

Background

The JEP is tasked with investigating, clarifying, prosecuting, and punishing the most serious crimes committed during more than 50 years of armed conflict in Colombia. This Jurisdiction is allowed to judge former FARC-EP combatants, members of the armed forces and also third parties (State agents other than members of the armed forces and civilians), but the latter only if they voluntarily submit to the JEP.

The JEP consists of three judicial panels and a Tribunal for Peace with four chambers. One of the panels is the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts. This panel has the responsibility to investigate the macro-cases related to the most serious and representative crimes; receive and compare the reports on conflict-related facts presented by State institutions, society and victims' organisations; receive individual and collective recognitions of responsibility and convene the acknowledgment of responsibility hearings. At the end of the proceedings, the Judicial Panel submits conclusions about the prioritised cases to the Tribunal for Peace. The Tribunal for Peace forms its own views on the criminal responsibility of those referred to it and imposes special sanctions to those with the highest responsibility for the most serious crimes.

Currently, the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts has opened 10 macro cases and the opening of the eleventh case is pending. The first seven macro cases were opened between 2018 and 2019 and are in advanced stages, last four macro cases were opened between 2022 and 2023 and are in preliminary stages. Those macro cases are: 1) Hostage-taking, serious deprivation of liberty and other concurrent crimes committed by FARC-EP; 2) Territorial situation in the municipalities of Ricaurte, Tumaco, and Barbacoas of the Department of Nariño; 3) Deaths illegitimately presented as combat casualties by agents of the state; 4) Territorial situation of the Urabá Region; 5) Territorial situation in the region of Norte del Cauca and Sur del Valle del Cauca; 6) Victimization of Patriotic Union (UP) members by State agents; 7) Recruitment and use of children in the armed conflict; 8) Crimes committed by members of the security forces and other State agents in association with paramilitary groups and civilian third parties; 9) Crimes committed against Ethnic Peoples and Territories in some illustrative territories; 10) Crimes where amnesties cannot apply committed by members of the extinct FARC-EP related to the Colombian armed conflict; 11) Crimes where amnesties cannot apply committed in the context of the armed conflict for reasons of hatred, prejudice, and discrimination based on sex, gender and sexual orientation, and gender identity.

In several of the prioritised macrocases, critical questions about environmental crimes and how to address them under international criminal law and national criminal law have arisen. The case of those accused who were regarded as worthy of a criminal sanction by the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts will soon be heard by the Chamber of the Peace tribunal deciding cases in which the accused recognised their responsibility. The Chamber needs to take decisions about the correct attribution of responsibility, the correspondence between facts and legal qualification, and the special sanctions for those who recognized responsibility.

Given the stark controversy among the magistrates of the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts on some of the legal issues around how to deal with environmental crimes, the Essex Human Rights Centre Clinic will provide the Peace Tribunal with legal and theoretical tools to answer the following questions:

Questions about the criminal prosecution and legal qualification:

- Based on the decision of the Panel of Acknowledgement that charged several members of the FARC guerrilla with having committed the war crime of harm to the environment, what are the main arguments of the majority decision as well as the dissenting and concurring opinions regarding their stance towards environmental crimes? What could be the advantages and disadvantages of each one of them? This information will be very useful in charts or mental maps that help to illustrate the debates.
- What causal link is required between the harm inflicted to nature and the commission of an international crime and what could be evidence for proving it? Are there international experiences that may guide the evidence gathering for establishing environmental harm as an international crime?
- If crimes against the environment were to be regarded as war crimes or crimes against humanity, how can individual criminal responsibility be established? Eg., what are the *actus reus*, *mens rea* and causation requirements that need to be established for an individual to incur responsibility for such a crime?

Questions about environmental projects that may restore the harm inflicted on nature:

- What international experiences exist in terms of environmental projects that have contributed to reincorporation processes and territorial peace? What lessons could be learned from these experiences for the Colombian case?
- How and to what extent could environmental projects contribute to the reparation of victims and the reconstruction of the social fabric of communities affected by armed conflict?

Prior input developed by international experts to address some of these questions already exists. Thus, this task should be considered as part of a broader discussion and might contribute to finding creative answers to the challenges the Peace Tribunal faces.

Project Output

The HRC Clinic project's findings will be presented in a 10,000-12,000-word report, which will be submitted to the Colombian Special Jurisdiction for Peace upon completion in June 2024, and one blog post (in May, around 1,000 words) conveying the summary findings.

The research will draw on a combination of desk research and interviews.

The output will be presented as an expert opinion to the Peace Tribunal to inform its decisions about the correct attribution of responsibility, the correspondence between facts and legal qualification, and the special sanctions (“juicio de correspondencia”) in the macrocase 05.

Timeline

Phase 1: November – December 2023:

- Preliminary research, understanding the project and developing research/report outline.
- Identifying a list of experts for interviews and questionnaires.
- Securing ethical approval, if necessary.
- Outline and bibliography to be submitted to the partner organisation for comments.

Phase 2: January – March 2024

- Carrying out the interviews online.
- Research and data gathering.
- Report writing.
- Submission of the first full draft to the partner.

■ Phase 3: April – June 2024

- Revision and finalising the report based on input from partners.
- Presentation of project to the partner.
- Blog post: Summary findings, questions, and reflections.

Initial reading

- Gillett, Matthew, *[Prosecuting Environmental Harm before the ICC](#)* (Cambridge University Press 2022), particularly ch. 2.
- Cusato, Eliana, *[The Ecology of War and Peace](#)* (Cambridge University Press 2021), ch. 1, 2, 3 and 6.
- Gillet., M; Lostal, M. (2023), Informed reflexion 11-2023. *Report on the accusation of environmental harms before the JEP* (Geman-Colombian Institute for Peace- CAPAZ)
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- Lambert, Caitlin 'Environmental Destruction in Ecuador:: Crimes Against Humanity under the Rome Statute?' (2017) 30 Leiden Journal of International Law 707-29.
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https://www.academia.edu/37547219/Philippe_Sands_Principles_of_Int_Environmental
- Weinstein, Tara, 'Prosecuting Attacks that Destroy the Environment: Environmental Crimes or Humanitarian Atrocities?' (2005) 17 Georgetown International Environmental Law Review 697
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