Chapter 20
Transitional Justice and Indigenous Jurisdictions Processes in Colombia: Four Case-Studies and Multi-Sited Ethnography

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ABSTRACT

Transitional justice and its range of mechanisms and goals appear to be an important debate about how to deal with past human rights abuses in transition societies or post conflicts. Because of the Peace and Justice Law 975 of 2005 and the actual Colombian scenario of a peace process between the Colombian state and FARC, the analysis of this kind of "justice" and the indigenous jurisdiction appear to be a complex subject in Colombia. The authors would like to discuss, the different uses of international and national laws concerning Indigenous peoples in Colombia, as a social process of complex interactions involving different types of agents (State actors, NGOs, international organizations, indigenous organizations, lawyers, etc.). In addition, it will be important to discuss how the transitional justice framework in Colombia brings up some incongruence to coordinate and apply concepts accordingly to the indigenous jurisdiction, drawing on four case studies and ethnographical work dealing with the international production of customary law.

DOI: 10.4018/978-1-4666-9675-4.ch020

INTRODUCTION

Colombia is one of the two countries in Latin America where Indigenous governments benefit from formal political autonomy. They are in Colombia 102 Indigenous nations and 1.378.000 persons (3.4% of the national population). This "consociation" model, instituted in the Constitution of 1991, granted local Indigenous authorities *(cabildos)* the right to exercise jurisdiction in their *resguardos* according to their own norms and procedures (Special Jurisdiction, article 246 of the Constitution of Colombia). The indigenous councils were granted the right to design and implement development plans, to promote public investments, to receive and administer public funds, to preserve natural resources, to cooperate in the maintenance of public order and to represent their own territories (Art. 330 Colombian Constitution).

Nevertheless, after twenty-four years, this model had partial regulations established in the 1953 act of 2014 that settle several provisions in order to administer the *resguardos* as an autonomic indigenous territory. This political autonomy is the base for the functioning of autonomous systems and procedures in Education, health, justice and life plans (strategies that organize and structure the community based on its future prospects). However, most of the times, these autonomous systems enter in conflict with the Colombian central state policies and governments political will. It is important to remark, that each indigenous group have their own system within their *resguardo* according to their costumes and culture.

This situation in relation to the juridical autonomous system is considered as an entanglement for the coordination between ordinary justice and indigenous justice, especially on issues such as the application of punishment. Recently, a mediated case that involved an armed conflict actor (Revolutionary Armed Forces of Colombia –FARC- guerrilla), put on discussion the legitimacy, effectiveness and guarantees of both jurisdiction due to the sentence of sixty years of prison to a rebel accused of killing two indigenous from the Nasa community at Toribio, Cauca in 2014. The supporters of the ordinary jurisdiction have questioned the guarantees and protection of human rights in a seven hour judgment. Nevertheless, other examinations praise the effectiveness and pragmatism of the indigenous jurisdiction contrasting with the inefficiency of the ordinary justice.

By itself, the study and analysis of the indigenous jurisdiction is a complex subject. However, this complexity becomes more difficult because the Peace and Justice Law 975 of 2005 and the actual Colombian scenario of a peace process between the Colombian state and FARC, that will bring several changes in all levels based on the "field" of transitional justice1. This kind of justice with a "conception of justice in periods of political transition" (Teitel, 2003: 1) has four purposes: firstly, to establish the truth of what happened and collect data of human rights violation cases. Secondly, the application of justice is not necessary trough the penal system. Thirdly, the realization of a democratic reform is needed. Finally, to ensure a peaceful post conflict processes (Benavides, 2013: 11).

This peace process has put into work many juridical frameworks in order to adequate the institutions for a social scenario in peace. Therefore, in order to attend all the indigenous rights violations, the transitional justice is based on the law 1448 of 2011 (land restitutions and victims law) with its differential application for the indigenous groups (4633 of 2011). This juridical framework aims not only at repairing indigenous individuals but also at considering indigenous groups as subjects of collective reparation (Art. 3 Act 4633). This transitional justice framework in Colombia brings up some incongruences when it comes to coordinate and apply the concepts accordingly to the indigenous jurisdiction that as we mentioned, is diverse depending on each indigenous group.

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Ehizuelen Michael Mitchell Omoruyi (2021). *Journal of Comparative Asian Development (pp. 1-31).*
www.irma-international.org/article/identifying-forward-and-backward-linkages-from-chinas-infrastructure-investment-in-africa/272582