

NEWSLETTER NO 7. OBSERVATORY ON THE JEP

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Colombian Commission of Jurists

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Newsletter No 7. Ethnic Focus in the Special Jurisdiction for Peace

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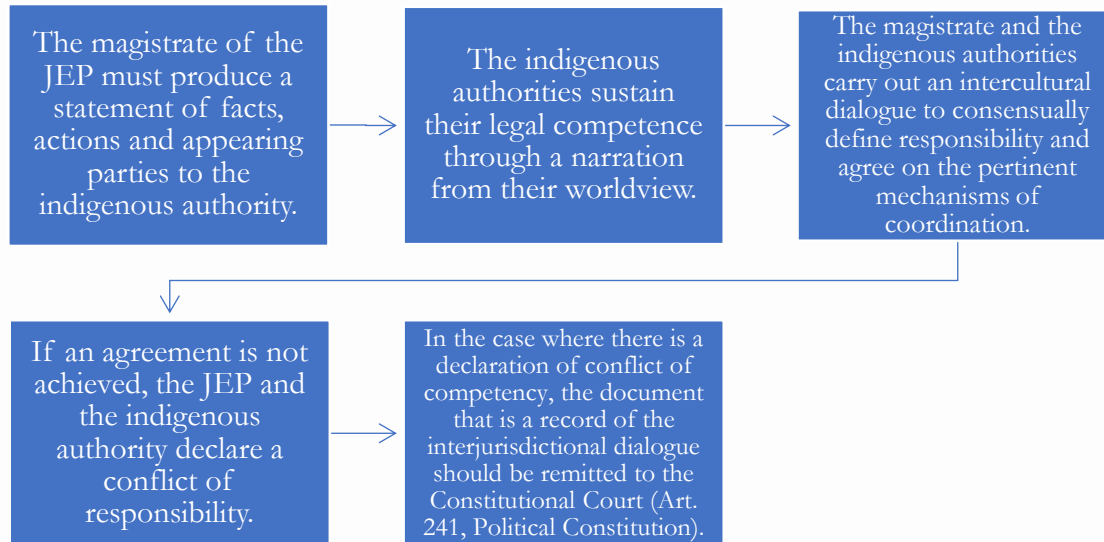
This bulletin concerns the legal framework for the application of the ethnic focus in the Special Jurisdiction for Peace (JEP - *Jurisdicción Especial para la Paz*). The ethnic focus is one of the guiding principles for the implementation of the Peace Agreement. In particular, the Peace Agreement, in its Ethnic Chapter, established that the that the JEP must incorporate an ethnic and cultural perspective and respect the right to participation and prior consultation with indigenous peoples where appropriate. In addition, it noted that the JEP should create mechanisms for articulation and coordination with the Special Indigenous Jurisdiction.

The JEP should apply the ethnic focus to all its actions and implement mechanisms of interjurisdictional coordination and dialogue.

Following the Peace Agreement, the rules implemented by the JEP include measures and mechanisms aimed at guaranteeing the implementation of the ethnic focus. Among them, the following stand out:

- **The ethnic focus is a guiding principle for the JEP**, so it must be applied in all its actions, procedures and decisions ([art. 1](#), paragraph c, Law 1922 of 2018). Thus, the JEP must identify the discrete impact of the armed conflict on ethnic peoples and their fundamental and collective rights ([art 18](#), Law 1957 of 2019). In the same way, the Recognition Chamber (*Sala de Reconocimiento*), in presenting resolutions of its conclusions and defining the most serious cases or most representative actions committed against indigenous peoples in the context of the armed conflict, must take into account criteria that allow it to account for both the differentiated impact on indigenous peoples as well as their relationship with the risk of physical and cultural extermination ([art. 79](#), paragraph m, Law 1957 of 2019).
- **Judicial integration is an interpretative criterion for the JEP**. This means that the JEP must respect the judicial functions of traditional indigenous authorities in their territorial area, as set out in the existing rules, provided that they do not conflict with the legal framework implemented by the JEP ([art. 3](#), Law 1957 of 2019). The JEP will have a prevalence only in matters within its competence, but the State must consult with indigenous peoples through the mechanisms of articulation and coordination with the Special Indigenous Jurisdiction ([art. 35](#), Law 1957 of 2019). In the event of a conflict of jurisdiction (arts. 98 and 99 of the [JEP Internal Regulations](#)), the JEP and the indigenous authorities will develop an interjurisdictional dialogue in order to resolve it in an agreed manner. This dialogue has the following steps:

Figure 1. The Stages of the Interjurisdictional Dialogue between the Special Jurisdiction for Peace (JEP) and the Special Indigenous Jurisdiction in order to resolve conflicts of responsibility.



(Source: [Protocol 001 of 2019 from the Ethnic Commission](#))

- **Indigenous Peoples, as collective subjects, can be considered to be victims and to acquire the quality of special participants in the proceedings before the JEP,** for individual or collective suffering of harm. ([Protocol 001 of 2019 from the Ethnic Commission](#)).
- **The ethnic authorities can be recognised as special participants in the JEP,** whenever the crime has affected one or more members of its community ([art. 4, Law 1922 of 2018](#)). On being recognised as special participants, they have the right to participate in the proceedings before the JEP and act in designation of the collective ethnic subject in order to safeguard their interests, to accompany the victims and appearing parties that they integrate and defend their legal code. ([Order 079 from 12th November 2019, Recognition Chamber](#)).
- **The members of the Indigenous Peoples have the right to use their official language in all proceedings before the JEP** in order to assure their full participation. For this, the JEP should guarantee access to translators and interpreters that have been previously accredited by the indigenous authorities before the JEP ([art. 12, Law 1957 of 2019](#); [art. 95, Internal Regulation of the JEP](#)).
- **In the proceedings before the Recognition Chamber, the JEP can consider the restorative practices of the Indigenous Justice System,** in order to promote dialogical construction of the truth and to search for harmonisation, healing and the development of agreements ([art. 27, Law 1922 of 2018](#)).
- **The JEP must implement mechanisms for articulation and coordination with the Special Indigenous Jurisdiction** ([art. 35, Law 1957 of 2019](#)). These mechanisms are established in the [Internal Regulation of the JEP](#) (article 96) and are as follows:

Figure 2. Mechanisms for articulation and coordination with the Special Indigenous Jurisdiction

Intercultural and interjurisdictional communication. The bodies of the JEP have a duty to promote intercultural and interjurisdictional communication with the ethnic authorities, especially in order to make agreements about carrying out actions in collective territories.

Withdrawal of the Indigenous authority's jurisdiction. When the JEP notifies an Indigenous authority that is, or was, involved in a past or present case, they must state whether they relinquish jurisdiction over it. The JEP must grant them reasonable and appropriate time to make this statement.

Centres for indigenous harmonisation and equivalent Institutions. The bodies of the JEP can impose sanctions to be implemented in the centres for indigenous harmonisation, once the ethnic authorities have given their consent. The JEP must offer the necessary support to guarantee the conditions of the sanction agreement and supervision over it by the indigenous authorities.

Handling of evidence in ethnic territories. The JEP will arrange the conditions and types of support for the collection or handling of evidence in ethnic territories with the ethnic authorities.

Notification to the Indigenous authority. When the bodies of the JEP are made aware of cases involving indigenous peoples, they must notify both the person and their Indigenous authority. They must use effective mechanisms that address the geographical reality and the cultural affiliation, ensuring access to advice and guidance.

Accompaniment to the Indigenous authority. In the case that the appearing party or the victim request the presence of the corresponding Indigenous authority, the JEP must guarantee this.

Cultural harmonisation. When the bodies of the JEP are made aware of cases that involve appearing parties who belong to indigenous populations, they must request the presence of an ethnic authority that understands the conditions of the concepts of harmonisation, admission and permanency in the ethnic territory established in their Justice System. In the cases in which it falls to the JEP to impose sanctions on the appearing party, and were these sanctions should be developed in the ethnic territory, the JEP must solicit the ethnic authority's consent.

Reintegration. The ethnic population can apply harmonising processes to members and their communities that may have completed the imposed sanction for the JEP outside of their ethnic territory.

(Source: [Internal Regulation of the JEP](#))

Ultimately, the JEP has the obligation to apply the ethnic focus to all its proceedings and should implement the necessary mechanisms for this. As observed, the legal framework implemented by the JEP contains distinct procedures that have already been put into effect. In the next bulletin we will analyse the Orders [079 from 12th November 2019](#) and 2nd and 27th January 2020, decisions made by the Recognition Chamber which supports the application of the ethnic focus through the recognition of the territories of indigenous Peoples as victims evidence.