

**REPORT No. 64/11<sup>1</sup>**  
CASE 12.573  
MERITS  
MARINO LOPEZ *ET AL.* (OPERATION GENESIS)  
COLOMBIA  
March 31, 2011

**I. SUMMARY**

1. On June 1, 2004, the Inter-American Commission on Human Rights (hereinafter the "IACHR" or "the Commission") received a petition presented by the *Comision Intereclesial de Justicia y Paz* (hereinafter "the petitioners") alleging the responsibility of the Republic of Colombia (hereinafter "the State" or "the Colombian State") for violations of human rights committed in relation to "Operation Genesis" between February 24 and 27, 1997, in the communities of the Cacarica river valley, in the Department of Chocó, which resulted in the death of Marino López Mena and the forced displacement of members of the Afro-descendant communities living on the banks of the River Cacarica, and for the failure to investigate the events and to punish the perpetrators.

2. On October 21, 2006, the Commission declared the claim admissible regarding the rights to life, personal integrity, judicial guarantees, equality before the law and judicial protection as well as to the obligation to respect those rights set out in Articles 4, 5, 8.1, 24, 25 and 1.1 of the American Convention, and the obligation to prevent, prosecute and punish torture set down in Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Convention to Prevent and Punish Torture") to the prejudice of Marino López Mena. In addition, it declared admissible the claim regarding the violation of the rights of personal integrity, judicial guarantees, protection of the family, of the child, to private property, to free movement and residence, to equality before the law, and judicial protection, as well as the obligation to respect those rights set out in Articles 5, 8.1, 17, 19, 21, 22, 24, 25 and 1.1 of the American Convention, to the prejudice of the displaced persons of the 22 communities in the Cacarica river valley.

3. The petitioners alleged at the merits stage that the State was responsible for the violation of Articles 4, 5, 8, 11, 17, 19, 21, 22, 24 and 25 of the American Convention, in relation to Article 1.1 and of Articles 1 and 8 of the Convention to Prevent and Punish Torture, to the prejudice of the Cacarica communities grouped together as the Self-Determination, Life and Dignity Communities (hereinafter "CAVIDA"), and the women head of household who live in Turbo and for the violation of Articles 4, 5, 8, 11, 17, 19 and 25 of the same instrument and of Articles 1 and 8 of the Convention to Prevent and Punish Torture, in relation to Article 1.1, to the prejudice of Marino López Mena and his family.

4. The State maintains that it is not responsible for the alleged violations of Articles 8, 17, 19, 21, 24 and 25 of the American Convention. It considers that the allegations regarding violations of Articles 11 and 4 of the American Convention to the prejudice of the displaced persons were not admitted in the Admissibility Report, and therefore cannot be considered at the merits' stage. In addition, it states that the alleged victims have not been individualized; and it rejects the claim of paramilitary activity as a State crime.

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<sup>1</sup> Pursuant to Article 17.2 of the IACHR Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the deliberation and decision of the present case.

5. After analyzing the parties' submissions of fact and law, the Commission concludes that the State is responsible for the violation of Articles 4, 5 and 1.1 of the American Convention, to the prejudice of Marino López Mena; and of Articles 8 and 25 of the American Convention; as well as Articles 1 and 8 of the Convention to Prevent and Punish Torture, to the prejudice of his immediate family, as well as its Article 6, in application of the principle *iura novit curia*. In addition, it concludes that the State is responsible for the violation of Article 22 of the American Convention in relation to Articles 1.1, 4 and 11, 5, 17, 21 and 24 of the American Convention, to the prejudice of the members of the Afro-descendant communities displaced from Cararica associated in CAVIDA, and the women head of household who live in Turbo; and also in relation to Article 19, to the prejudice of their children.

## **II. PROCEEDINGS BEFORE THE COMMISSION AFTER ADMISSIBILITY REPORT No. 86/06**

### **A. Processing of the Case**

6. After completing the admissibility proceedings of petition No. 499/04, the Commission declared the case admissible through the adoption of Report 86/06.<sup>2</sup> In conformity with the provisions of Article 37.2 of its Rules then in force, it subsequently proceeded to register the petition No. 499/04 under case number 12.573. Report 86/06 was notified to both parties through a communication dated November 14, 2006. On that occasion, the Commission requested that the petitioners present their allegations on the merits of the case within a time limit of two months, in accordance with Article 38.1 of its Rules then in force and it placed itself at the disposal of the parties with a view to reaching a friendly settlement.

7. On February 6, 2007, the Commission called the parties to a hearing scheduled to take place on March 6, 2007, in the context of the IACHR's 127th Period of Sessions, in order to receive testimony. The hearing was suspended due to the fact that the witness was denied a visa to enter the United States.

8. On March 10, 2008, the petitioners presented their allegations on the merits which were sent to the State on March 18, 2008 for its observations. Due to an accidental material error, the State was granted an incorrect time limit of 30 days instead of the two months established by the Rules. On April 22, 2008, the State requested the grant of a reasonable time to present its allegations on the merits. In reply, on May 16, 2008, the IACHR requested that the State present its allegations within two months. On September 23, 2008, the State requested from the IACHR the audio recording of the testimony rendered by Bernardo Vivas on the IACHR's visit to Colombia in 2001.

9. On February 23, 2009, the IACHR called the parties to a hearing on March 23, 2009. On February 24, 2009, the State requested the cancellation of the hearing, considering that: (i) the petitioners had 16 months since the admissibility report to present their allegations on the merits, and therefore, under the principle of procedural equality, the State should have the same time to present its position on the merits and (ii) that the petitioners allege that Bernardo Vivas (a witness to Marino López's death) was heard by the IACHR in the context of an *in loco* visit to Colombia held in 2001 (before the petition's presentation), which violates its rights to a defense and that they do not have a transcript of the said testimony.

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<sup>2</sup> IACHR, Report No. 86/06, Petition 499-04, Admissibility, Marino López et al. (Operation Genesis), Colombia, October 21, 2006.

10. On March 6, 2009, the IACHR indicated that the State had had the corresponding procedural opportunity to access the petitioners' allegations on the merits and would have ample opportunity to respond to them at the hearing and, if necessary, subsequently. The IACHR added that in its 2001 *in loco* visit it received various information on the situation of human rights in Colombia pursuant to its monitoring function, and that it did not take testimony in the framework of individual cases, and did not prepare transcripts. As a result, the information relevant to the claim was that submitted by the petitioners in the context of the individual case, and the State had the opportunity to present any relevant response.

11. On March 23, 2009, a hearing was held on the merits in the context of the IACHR's 139th period of sessions, where the petitioners presented further written allegations, which were sent to the State on July 7, 2009, together with a petitioners' communication received on May 19, 2009 and its annex received on July 2, 2009. On August 10, 2009, the State requested an extension of 15 days to present its response which was granted on August 12, 2009. On September 1 and October 8, 2009, the State sent the IACHR its allegations on the merits with their annexes, respectively.

## **B. Proceedings for Precautionary Measures**

12. On December 17, 1997, the IACHR issued precautionary measures MC 70/99, after determining in its *in loco* visit that the displaced communities of Cacarica had been the targets of threats and violence by paramilitaries. The measures were issued in favor of those who were in "the displaced encampments of Turbo, including the municipal sports arena, and in the dwellings they had constructed."<sup>3</sup> The IACHR subsequently issued precautionary measures in favor of the displaced persons in Bocas de Atrato, Quibdó, and in 1998 requested information on the displaced who had settled in Bahía Cupica.

13. In April 2001, a precautionary measures hearing was held in Bogotá. On November 13, 2001, and on October 17, 2002, during the 113th and 116th IACHR periods of sessions, precautionary measures hearings were held in Washington, D.C. In May 2002, a precautionary measures hearing was held in Bogotá.

14. On April 4, 2003, on receiving information about an incursion by approximately 300 armed men into the humanitarian zone of "Nueva Vida" which had taken place on March 11, 2003, the IACHR requested as a matter of urgency that the State "maximize the measures necessary to comply with the precautionary measures granted". In July 2003, the IACHR undertook a visit to Colombia and verified the security conditions of the communities with regard to the precautionary measures. In addition, a working meeting was held between June 22 and 23, 2003.

15. On October 15, 2003, and March 3, 2004, a hearing and working meeting on precautionary measures were held during the 118th and 119 IACHR's period of sessions, respectively. On October 19, 2005, a working meeting was held during the 123rd IACHR period of sessions. The parties continued to inform on the beneficiaries' situation and the implementation of the precautionary measure up until 2008.

16. On April 18, 2006, the State requested that the IACHR transfer the documents of the precautionary measures case file to the petition's case file. The IACHR considered that this request was relevant to the overall analysis of the petition's subject matter.<sup>4</sup>

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<sup>3</sup> IACHR Communication to the State of December 19, 2001 in precautionary measures proceedings MC 70/99.

<sup>4</sup> IACHR, Report No. 86/06, Petition 499-04, Admissibility, Marino López et al., October 21, 2006, para. 6.

17. The precautionary measures remain in force at the date of the approval of this report and encompass the Afro-descendant communities associated in CAVIDA and relocated onto the collective lands on the Cacarica river.

### III. POSITIONS OF THE PARTIES ON THE MERITS

#### A. Position of the Petitioners

18. The petitioners allege that the State is responsible for the violation of Articles 4, 5, 8, 11, 17, 19, 21, 22, 24 and 25 of the American Convention, in relation to Article 1.1 to the prejudice of the Cacarica communities associated in CAVIDA, and the displaced women head of household in Turbo and for the violation of Articles 4, 5, 8, 11, 17, 19 and 25 of the same instrument in relation to Article 1.1 to the prejudice of Marino López and his family.

19. They allege that between February 24, and 27, 1997, the 23<sup>5</sup> Afro-descendant communities living the Cacarica river basin were affected by a series of aerial and land bombardments, pillaging, destruction of property and acts of intimidation and harassment which led to their massive forced displacement. They point out that this military operation, called "Operation Genesis", had been planned by the XVII Brigade of the National Army (hereinafter "the XVII Brigade") with the official aim of combating the presence of the Revolutionary Armed Forces of Colombia (FARC-EP) in the area, and had been carried out with the joint action of the military and paramilitaries wearing insignia of the Unified Self Defense of Colombia (AUC) and the Farmers Self Defense of Córdoba and Urabá (ACCU). They allege that these paramilitary and military raids forced the population to migrate from their land to the Turbo municipality, in the Antioquia Department.

20. The petitioners allege that during "Operation Genesis", on February 27, 1997, in the hamlet of Bijao, paramilitaries and the military detained Marino López, tortured him, decapitated him with a machete and cut him up in the presence of community members. They allege that afterwards, they repeatedly kicked Marino López's head in a pretend football match, after which they invited the members of the community to join in the 'game'. They allege that the murder of Marino López served as an example, and hastened the massive forced displacement of the communities, who in the main then relocated in three places: the Turbo stadium, Bocas de Atrato and Panama. They indicate that the displaced were met by the police in Turbo, and placed in the municipal stadium, where almost all the communities were hoarded.

21. As a matter of context, the petitioners allege that during their forced displacement, the displaced individuals survived in inhuman living conditions, and continued to be the target of threats, murders and forced disappearances. Thus as an example, they alleged that a series of human rights violations were committed against them, which were also presented by the petitioners before the IACHR in the precautionary measures proceedings. These events are summarized as follows:

Name	Alleged Violations	Location	Date	Alleged Perpetrator
Enith María Gómez Pérez and	Detained and disappeared	Pedeguita Community	March 1, 1997	Paramilitaries mobilized with the National Army
Manuel Segundo Gómez Pérez	Disappeared			

<sup>5</sup> See *infra* IV.C.1. Prior Considerations.

Name	Alleged Violations	Location	Date	Alleged Perpetrator
Licino Palacio Ramírez	Detained, bound hand and foot, beaten and disappeared	La Loma (on the banks of the River Perancho)	March 18, 1997	Paramilitaries
Pedro Causil	Murdered by two bullet wounds	Road leading from Bocachica to La Balsa, Riosucio Municipality, area of Salaquí	March 31, 1997	Paramilitaries
Jairo Causil	Detained and disappeared	Turbo Urban Area	April 30, 1997	Paramilitaries on patrol with the National Army
Cleto Ramos	Murdered	Teguerré Community	May 15, 1997	Paramilitaries in coordination with the National Army
Marino Raga Rovira	Murdered		June 14, 1997	Paramilitaries Acting jointly with the National Army
Guillermina Piedrahita <sup>6</sup>	Raped and murdered		June 22, 1997	Paramilitaries
Evangelista Díaz Escobar	Detained, beaten, tied up and disappeared	The Vereda of El Porvenir	June 25, 1997	Paramilitaries
Jesús Serna	Unlawfully raided, destruction of property, detained and murdered.	Hamlet of Santa Lucía	July 3, 1997	Paramilitaries acting in coordination with the National Army
Adalberto Mosquera and Luis Alberto Murray	Detained and disappeared	River Perancho	August 19, 1997	Paramilitaries
Herminio Mosquera Palomeque <sup>7</sup>	Detained, tortured and disappeared	Highway leading from Turbo to Apartadó	December 1, 1997	Paramilitaries

<sup>6</sup> According to the allegations, on June 22, 1997, a paramilitary group arrived in the Santa Lucía community and entered Guillermina Piedrahita's home where she was with her mother, baby and three other children. The paramilitaries asked for her husband and stated that he was a guerilla. Guillermina Piedrahita replied that her husband was not a guerilla and was not at home. The paramilitaries took her baby from her and bound her hands while her mother asked them not to take her away. They then replied "calm down, we're going to do a little errand with her and then have her back." They then took Guillermina Piedrahita away and ordered her mother not to leave the house for three days. On June 23, 1997, the mother found her daughter's naked body, with clear evidence of having been sexually abused and her throat cut. Testimony of Jesús Serna's wife. Initial Petition of June 1, 2004.

<sup>7</sup> Petitioners' brief in the proceedings of MC 70-99 received on April 29, 1999 and on May 9, 2001. Cf. Ombudsman's Office. Resolution of the Ombudsman No. 025 – On the Massive Human Rights Violations and Forced Displacements in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

22. The petitioners maintain throughout their allegations that in the present case: (i) the crimes committed constitute crimes against humanity, (ii) the responsibility of the State is aggravated and (iii) the American Convention must be interpreted in light of its Article 29.

23. In the first instance, they stress that the territorial control, the strategy of intimidation and violence, the economic and food blockades, the acts of intimidation, the targeted extrajudicial executions, forced disappearances, the restrictions on mobility and forced displacements suffered by the Cacarica communities in the months before February 24, 1997, constituted a systematic pattern of human rights violations, which produced a conducive atmosphere aiding the development of "Operation Genesis" and the crime against Marino López. In addition, they alleged that the circumstances after "Operation Genesis" and the subsequent forced displacement constitute a systematic pattern coincidental with the appropriation of the displaced communities' collective property for economic investment projects and the formation of a model of development destructive to the communities' identities.

24. They allege that international law treats forced displacement as a crime against humanity and that what occurred within the Cacarica communities must "be understood in three ways, of cruelty to human life, of defiling human dignity, and of destroying a human culture. Understood within these three meanings, the crime against humanity may easily be turned into a 'crime against the entire human race'".<sup>8</sup> Therefore, they allege that paramilitary groups and State agents are responsible for crimes against humanity.

25. In the second place, they consider that these systematic human rights violations: the massive force displacements, the State's lack of concern and negligence with regard to the displaced communities; also the cruelty and savagery of the perpetrators' *modus operandi* (military and paramilitaries), the denial of justice and the pattern of impunity deriving from "Operation Genesis", lead to the determination of the State's aggravated responsibility, given the existence of the following elements: (i) crimes against vulnerable groups – boys, girls, women, displaced persons and Afro-descendants – who require special guarantees from the State; (ii) forced disappearances as part of a systematic pattern or practice applied or tolerated by the State, given its character as a crime against humanity; and (iii) extrajudicial executions in the context of a strategy emanating from high-ranking army personnel, culminating in the absence of effective judicial mechanisms to investigate the violations and punish all the perpetrators.

26. In the third place, they allege that the State's international responsibility must be analyzed taking into account the especially vulnerable condition of Afro-descendant communities and displaced persons in the context of violence and internal armed conflict in Colombia. Therefore, they consider it necessary that the American Convention be interpreted in the light of other relevant international instruments, as laid down in its Article 29.

27. Among the international instruments they consider useful in the interpretation of the rights of the Afro-descendants and their *corpus iuris*, they highlight the American Declaration on the Rights and Duties of Man, the International Covenant on Civil and Political Rights, the General Observation No.23 of the Human Rights Committee; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the International Convention on the Elimination of All Forms of Racial Discrimination (UN). They also include the Universal Declaration of the Rights of Peoples<sup>9</sup>, ILO Convention No. 169<sup>10</sup>, the UN Guiding Principles on

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<sup>8</sup> The petitioners cite: Forth Report on the Project of the Code of Crimes against Peace and Human Security. Doc. A/CN.4/398\*, March 11, 1986, No. 12. Petitioners' brief of March 23, 2009.

<sup>9</sup> In this regard, they stress that the Permanent Tribunal of Peoples held a hearing on diversity in Colombia in the Cacarica basin and in its conclusions it referred to the urgent necessity for truth, justice and full reparation for the families in  
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Forced Displacement and the rules on displacement derived from Protocol II Additional to the 1949 Geneva Conventions, particularly Article 17; and Article 7(1)(d) of the Statute of the International Criminal Court declaring the forcible transfer of a population as a crime against humanity.

28. They allege that it was the State, which produced the situation affecting the rights of community members, and from the moment the State planned "Operation Genesis", it knew of the imperative that no violations should be perpetrated against the civilian population. They allege that the State failed to adopt measures to prevent the aforementioned crimes. They allege that given the events prior to "Operation Genesis", the Cacarica communities received no guarantees of protection by the State, and therefore they consider that the State is responsible for failing in its duties to prevent such crimes and to protect their human rights.

29. They consider that the State's responsibility for violation of the general obligations set forth in Article 1.1 of the American Convention originated, *inter alia*, in the action of its agents together with members of the paramilitary campaign and of judicial personnel for the events occurring between February 24 and 27, 1997, the forced displacement, and the impunity still surrounding the events, which have allowed the repetition of new criminal conduct.

30. They allege that if Operation Genesis' objective consisted of attacking a legitimate military target, it should have been carried against the guerillas and not against the civilian population. They allege that the said operation did not involve fighting or confrontations and that the means used were irregular, a method of combining regular, disproportionate operations, with illegal means of the paramilitary campaigns. They maintain that throughout the operation the principles of proportionality and primacy of international humanitarian law were not respected. They allege that the *modus operandi* employed in the commission of these crimes was no different from that used on repeated occasions and in a structured way by the military forces and the paramilitary campaign against the civilian population in various regions of the country, with the "justification and veneer of actions in the context of 'batling the counterinsurgency'".<sup>11</sup>

31. The petitioners allege that the State is responsible for the violation of Marino López's right to life and personal integrity. In this regard, they consider that the State did not protect or adopt measures to prevent and halt Marino López's being tortured and murdered. They allege that he endured an imminent threat against his life and personal integrity before being beheaded and he felt vulnerable, and therefore he was the victim of a violation of his right to personal, psychological and moral integrity. They allege that Marino López was subjected to "dehumanization and denial of his humanity"<sup>12</sup>, and given that his extrajudicial execution was committed against the background of a general and systematic attack, it represents a crime against humanity. They allege that the State's responsibility is aggravated given the brutality of Marino López's execution, in full view of the community members.

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the communities living in the humanitarian zones and some families still displaced in Turbo, in particular the women head of household, with respect to "Operation Genesis". Session on Biodiversity in Colombia. Third Hearing held in the humanitarian zone of *Nueva Esperanza en Dios* in the Cacarica basin from February 24 to 27, 2007. They indicate that in the course of the hearing, Marino López's remains were buried "as an affirmation of community pain, an expression of healing and a rebuilding of memories." Petitioners' allegations on the merits, received on March 10, 2008, para. 228.

<sup>10</sup> In view of the fact that the Committee of Experts in Applying the Conventions and Recommendations (CEACR) of the OIT recognized the communities of the Jiguamiandó and Curbaradó basins as tribal peoples in March 2007. CEACR: Individual Observation on the Convention on Indigenous Peoples and Tribes, 1989 (No. 169), Colombia. Publication: 2006. No. 062006COL169. Petitioners' allegations on the merits received on March 10, 2008, paras. 228 and 229.

<sup>11</sup> Petitioners' allegations on the merits received on March 10, 2008, para. 220.

<sup>12</sup> In support of their argument the petitioners cite: I/A Court H.R. *Case of Almonacid Arellano et al.*, Judgment of September 26, 2006, para. 99. Petitioners' allegations on the merits received on March 10, 2008, para. 233.

32. They allege that Marino López's immediate family suffered effects of the violations inflicted on Marino López and the denial of justice and the lack of a State response, which produced feelings of pain and helplessness injuring their integrity and their dignity, and therefore they are also victims of a violation of their right to psychological and moral integrity.

33. In the same sense, they allege that the State is responsible for the violation of the rights to life and personal integrity of the communities' members. They allege that the crimes committed against Marino López produced collective feelings of helplessness, fear and anxiety, which fractured the processes of peace and social harmony in these communities, and affected their community life and the integrity of their lands. They allege that both Marino López's immediate family and the members of the community bore witness to the acts of torture and decapitation suffered by Marino López, as well as all the circumstances surrounding his execution, which caused them pain and intense anguish. In addition, the petitioners maintain that "Operation Genesis", the crime against Marino López and forced displacement fractured the Community's organizational levels and unity and therefore the psychological and moral integrity of its members has been violated. They allege that the bombardment had a collective impact of shock, anxiety and panic with lasting effects.

34. The petitioners allege that the State is responsible for the violation of the right to free movement and residence, the protective scope of which encompasses the right not to be displaced. In this regard, they allege that the situation of vulnerability experienced by individuals suffering the phenomenon of internal forced displacement is complex and that given the internal conflict in Colombia, the interpretation of Article 22 of the American Convention must be made by reference to Article 29, in light of the UN Guiding Principles of Internally Displaced Persons and the rules on displacement contained in Protocol II to the 1949 Geneva Conventions.

35. The petitioners consider that "Operation Genesis" represented: (i) the absolute curtailing of the communities' members right to free movement between February 24 and 27, 1997; (ii) the massive forced displacement caused by the State through the action of militaries and the paramilitary campaign, towards Turbo; and (iii) the lack of State measures to ensure the comprehensive return of the communities to their lands. From all the foregoing, they consider that the State has violated Article 22 of the American Convention, to the prejudice of the communities associated in CAVIDA and the women head of household living in Turbo.

36. They allege that forced displacement involves the violation of various human rights, in terms of its context and the vulnerable situation of its victims. They indicate that the displaced persons abandoned their lands and animals, were faced with unemployment, malnutrition, illiteracy, the mortality rate due to preventable diseases or the harsh conditions facing them, making their natural habit impossible, they suffered from precarious living and environmental conditions, limitations on access to and use of health services and drinking water, marginalization due to economic, geographic and cultural reasons; as well as a break with their values and socio-cultural practices. They allege that in the three reception points of the displaced persons, their living conditions were incompatible with the due respect for personal integrity and their right to a dignified life.

37. According to the foregoing, they consider that the State is responsible for the violation of Articles 4, 5.1 and 5.2 of ACHR, in connection with Article 1.1, and Articles 1 and 8 of the Convention to Prevent and Punish Torture, to the prejudice of Marino López's immediate family,

of the communities associated in CAVIDA and the women head of household living in the municipality of Turbo.<sup>13</sup>

38. The petitioners allege that the State is responsible for the violation of the right to protection of the family. They allege that the crimes affected autonomously the coexistence and unity of the individual families of the Cacarica communities. They allege that the rupture in the family and fraternal relations, due to the violence; the family breakdown and disintegration due to forced displacement over various years; the uprooting from individual and collective lands; the loss of loved ones, *inter alia*, constituted a direct attack on the family. In addition, they allege that with Marino López's death, his partner, Emedelia Palacios Palacios, took on a new family role for their children, who grew up without a father, and with the trauma of his violent death. Therefore they consider that the State has violated Article 17 of the American Convention in relation to Article 1.1, to the prejudice of Marino López's family, the communities associated in CAVIDA and the women head of household who live in Turbo.

39. The petitioners allege that the State is responsible for the violation of the rights of the child to the prejudice of the boys and girls of the communities associated in CAVIDA and of the children of the women head of household living in Turbo. In this regard, they allege that these boys and girls' rights have been affected by violence since they were eyewitnesses to the commission of human rights violations, they fled and travelled large distances braving dangers, they were displaced and they were direct victims of attacks against their dignified existence and personal integrity. They allege that they are sensitive to the process of breaking of individual, family and collective ties in their communities; that they developed feelings of confusion, misunderstanding and profound sadness; and kept in mind memories that disrupted their childhood, created feelings of fear, pain and helplessness and interrupted the processes of physical, emotional and family growth and the definition of their cultural identity. They allege that the forced displacement disrupted their education, life projects and their cultural and ancestral traditions relating to the occupation of their lands. Therefore, they consider that the State has violated Article 19 of the American Convention in relation to Article 1.1 to the prejudice of these boys and girls.

40. The petitioners allege that the State is responsible for the lack of protection of the right to honor and dignity, and the violation of the right to private property. They allege that the protection of the right to honor and dignity must be understood within the logical context of the Afro-descendants of Cacarica, with their land as "essence, life and sustenance". They maintain that home and private life are inextricably linked, since home is the space where private life can be developed freely. They maintain that violent, arbitrary and disproportionate interference, occupation and destruction of the spaces for intimate and community life, and that destruction of the Cacarica communities' living spaces, crop areas, private and collective property, and moveable and immovable property, all profoundly affect their way of life and survival, their culture and ancestral identity. They allege that their vital and community understanding of land was violated by "Operation Genesis".

41. They allege that with the passage of time the economic interests behind the forced displacement and depopulation of the communities' lands have been uncovered, *inter alia*, after the presence of various companies who came to the area to exploit its natural resources, the construction of highways and the planning of mining projects. They allege that along with "Operation Genesis" came the guarantee of access for these companies to the area's natural resources. They consider that the State has a duty to ensure the protection of ancestral lands and,

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<sup>13</sup> Albarina Martínez Córdoba, Josefina Mena Moreno, Vrigelina Blandón Palacios, Alicia Mosquera Urtado, Justa Lemos de Palomeque, Aurora Murillo and Eloisa Mosquera. Census of forced displacement victims - Operation Genesis. Annex to petitioners' brief of March, 23, 2009.

therefore, of collective property. From all the foregoing, they allege that the State has violated Articles 11.2 and 21 of the American Convention in relation to Article 1.1, to the prejudice of the communities associated with CAVIDA and the women head of household in Turbo.

42. The petitioners consider that the State is responsible for the violation of the autonomous right to equality and non-discrimination, operating as a criterion for the protection of all human rights. They allege that the Cacarica communities have been victims of historical and systematic discrimination by the State by being relegated from the fulfillment of public policies, by lacking effective State protection and by living in precarious subsistence conditions; thus placing them in a vulnerable state, as an easy target for aggression and attack. They allege that there has been discrimination against the Afro-descendant tribal people of Cacarica by reason of the place where they live, which is considered a strategic geographical area. They allege that the State did not prevent the violations, nor did it protect or guarantee the human rights of these Afro-descendants. They allege that the State failed to adopt positive measures to prevent or alter the discriminatory situations against the alleged victims. They allege that the assistance actually provided to them failed to take into account their unique character as tribal and Afro-descendant peoples. From the foregoing, they consider that the State has violated Article 24 of the American Convention in relation to Article 1.1.

43. The petitioners allege that the State is responsible for the violation of the rights to judicial guarantees and protection, given that it failed to ensure the full and free exercise of the rights enshrined in the American Convention, that the human rights violations were not prevented and that, after more than twelve years, the perpetrators have not been tried or punished. They allege that the State has failed to clarify the truth and that the victims have not received reparation.

44. They allege that there have been multiple difficulties in the judicial investigations undertaken and that these have affected the enjoyment of judicial guarantees and the rights to judicial protection and truth, and the access to justice and reparations. They allege that the full and active participation of the victims in the judicial process has been hampered, so that impunity for the crimes continues as a multiple violation of human rights. In addition, they allege the existence of an atmosphere of impunity in view of the fact that the investigations are currently archived, precluded or remain at a preliminary stage.

45. They allege that during this time there has been continual negligence in the gathering of technical evidence regarding the destruction of the villages, the identification of the craters of the bombardment, the undertaking of exhumations, and the denial of access to justice, given the difficulties faced by the victims to participate as civil parties in the criminal proceedings.

46. They allege a lack of independence and impartiality of the judicial branch in the criminal investigation through attacks and judicial reprisals, as well as the threats against the lives and jobs of the officials working at the National Human Rights Unit of the Prosecutor General's Office (UDH-FGN) which were conducting investigations against members of the Security Forces such as General Del Río Rojas. They allege that the UDH-FGN officials investigating this General and his subordinate's responsibility in the development of "Operation Genesis" and the commission of crimes against humanity, were subjected to persecution.

47. They allege a lack of independence and impartiality on the part of former Prosecutor General, Luis Camilo Osorio, who ordered the closing of the criminal investigations against the aforementioned General for the crimes committed in "Operation Genesis", and dismissed the evidence and arguments lodged by the victims.

48. Regarding the State's allegation with respect to the victims' lack of collaboration as a justification for the impunity of the crimes, the petitioners reply that the prosecution never

undertook to gather the available technical evidence which it might have undertaken given that: the attack causing the forced displacement was forceful, the displaced persons had been living in Turbo for three years, and all these were events which should have impelled the initiation of an *ex officio* investigation. In addition, they allege that the crimes and the uprooting of the displaced persons were known to the Government and the FGN, and therefore a speedy investigation could have been undertaken from the time they occurred.

49. They allege that an investigation to establish individual responsibility for the forced displacement was never initiated --among other reasons because of the absence of criminal classification of this type of conduct up until the year 2000--, and that there has been no comprehensive State response in the face of the *tutela* actions lodged, resulting in "inconsequential decisions". From the foregoing, they consider that the State has violated Articles 8 and 25 of the American Convention in relation to Article 1.1, to the prejudice of Marino López's immediate family, the communities associated in CAVIDA and the women head of household living in Turbo.

#### **B. Position of the State**

50. The State maintains that the case only refers to the events referred to in Admissibility Report No. 86/06 and deals exclusively with the alleged violation of Articles 4, 5, 8.1, 24, 25 and 1.1 of the American Convention, Articles 1 and 8 of the Convention to Prevent and Punish Torture, to the prejudice of Marino López, and the alleged violation of Articles 5, 8.1, 17, 19, 21, 22, 24, 25 and 1.1 of the American Convention, to the prejudice of those displaced from the Cacarica basin as a result of the events occurring between February 24 and 27, 1997; and that the events that were not admitted in the admissibility report should be ignored. In addition, it alleges that the Commission must only rule with respect to events occurring after the entry into force of the Convention to Prevent and Punish Torture.

51. It maintains that it is not responsible for the alleged violations of Articles 8, 17, 19, 21, 24 and 25 of the American Convention and that the allegations on violations of Articles 4 and 11 of the American Convention to the prejudice of the displaced were not admitted in the admissibility report, and as such cannot form the basis of the case on the merits.

52. The State considers it important that the events be outlined in the historical context without the said context generating international responsibility. In addition, it considers that the statements in context should be duly proved. It alleges that the petitioners' statements in context are based on books written by the alleged victims, which, according to the International Court of Justice, may only constitute evidence in international proceedings to corroborate issues already proven.

53. It alleges that the petitioners have based the contextual statements on reports issued by international organs produced from their monitoring functions and that the said functions cannot result in the prejudgment of a contentious case. In this respect, it stresses that the Convention enshrines one of the IACHR's different functions as the "preparing studies and reports considered necessary for carrying out its functions" (Article 41.e) and as "acting with regard to petitions and other communications in the exercise of its authority in conformity with the provisions of Articles 44 and 51".<sup>14</sup> Therefore the State rejects statements in context, which it considers lacking in evidence.

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<sup>14</sup> The State alleges that in the IACHR's Rules, the proceedings for individual petitions (Chapter 11) and that for the preparation of general reports (Chapter V) are governed by different chapters. It indicates that in this way, given that the nature and proceedings to comply with one or other of the competences of international organs are different, the effects of its conclusions are likewise different. It maintains that the Commission has been consistent in stressing that its monitoring

54. It considers that the requirement of proof is greater with regard to the context presented by the petitioners, on alleging the presumed existence of State policies or generalized practices of human rights violations. It alleges that the statements in which they attempt to establish a nexus between the Security Forces and the illegal self-defense groups as generalized State policy lacks evidentiary support and ignores the State's position of permanently rejecting the phenomenon of illegal self-defense. It maintains that the existence of paramilitary activity and the unfortunate and *ad hoc* connivance with some members of the State's security forces is something already recognized by the Inter-American Court, but in no case has the existence of an institutional policy of the State, directed to favoring or strengthening paramilitary activity been considered. It maintains that the phenomenon of paramilitary activity in Colombia is surrounded by various elements of, *inter alia*, a political, sociological, economic and cultural character - typical to each geographic region and period in time. The State objects to the allegations on the responsibility for paramilitary activity as an irregular counter-insurgency policy or institutional strategy and rejects *in limine* all those allegations directly referring to paramilitary activity and to the existence of an institutional policy of that nature.

55. In addition, in relation to the consideration of evidence originating from the alleged victims, the State argues that the Inter-American Court has stressed that when "the alleged victims have a direct interest in the case, their statements shall not be assessed separately but as a whole with the rest of the body of evidence of the proceeding"<sup>15</sup>. In this regard, it expresses concern at the lack of procedural consequences for the party indulging in this type of conduct in individual petition proceedings, which compromises the effective guarantee of human rights. It maintains that the "statements" of Mr. Bernardo Vivas were not given before the Colombian judicial authorities, and so the State did not have the opportunity of weighing them and incorporating them within the investigations or proceedings underway for the events. It considers that this ignores the principle of subsidiarity of the procedure before the Commission. The State also alleges that Bernardo Vivas' statement is not sufficient evidence to prove the events related, and must be corroborated by other evidentiary means, since the said Bernardo Vivas has acknowledged that he is one of the alleged victims in the present case.

56. The State alleges that the petitioners offer as evidence documents of a private nature, which were filed before the national judicial authorities and that cannot stand as evidence, to the extent that they include submissions made in domestic proceedings already decided upon by the competent authorities. The State considers that the *constancias* (public statements made by the petitioners) cannot be held as evidence either due to the lack of proof of their having been received by the authorities; or failing this, the Commission would be acting as a fourth instance court.

57. The State reiterates that Mr. Bernardo Vivas Mosquera's statement, taken by the IACHR in the context of the *in loco* visit conducted in Colombia in 2001, is absent from the case file in the present case, and that the petitioners sent a sworn affidavit from Bernardo Vivas on April 3, 2009, with extra-procedural aims, which refers to the alleged events. The State considers that the reference to alleged evidence which has not been sent for the State's response or that - as has occurred in the present matter - is absent from the case file, constitutes an act of procedural

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...continuation

activities cannot form a prejudgment with regard to petitions or individual cases. Note of the Foreign Ministry, August 27, 2009, para. 27.

<sup>15</sup> In support of its argument the State cites: I/A Court H.R. *Case of Kawas Fernández*. Judgment of April 3, 2009, Series C, No. 198. para. 40; *Case of Loayza Tamayo*. Judgment of September 17, 1997, Series C No. 33, para. 43; *Case of Ríos et al.*. Judgment of January 28, 2009. Series C, No. 194, para. 89, and *Case of Perozo et al.* Judgment of January 28, 2009. Series C, No. 195, para. 103. Note of the Foreign Ministry, August 27, 2009.

disloyalty and a lack of truth on the Commission's and alleged victims' part, because it is through the evidence that the Commission may reach conclusions as to the truth of the events.

58. With regard to Marino López's death, the State maintains that the troops' situation reports and the itinerary of "Operation Genesis" demonstrate that Brigade XVII was not deployed in the Bijao area. It alleges that in accordance with the investigation's hypothesis, the killing of Marino López was perpetrated by members of the self-defense forces, and thus there is no international responsibility for the alleged violation of the right to life. It also alleges that there is no evidence of racially motivated acts against the victim and that therefore no violation of the right to equality before the law against Marino López has been demonstrated.

59. With regard to the alleged violations of the physical and moral integrity of Marino López's immediate family, the State maintains that the alleged violation of Article 5 of the ACHR presupposes the existence of responsibility for the alleged violations, and that given that the State's responsibility for the violation of the right to life of Marino López has not been established, this presumption would not necessarily follow. They also maintain that Marino López's direct family members have not been individually identified.

60. With regard to the alleged forced displacement of persons, the State argues that it is impossible to assess its responsibility for these events. It indicates that it is essential to prove a causal nexus between the events of the case and the forced displacement so that an international crime arises and consequently the international responsibility of the State and to prove that the alleged victims were forcibly displaced solely by "Operation Genesis".

61. It alleges that between December 1996 and the first part of 1997, various regrettable events occurred which gave rise to different displacements, for different reasons and at different times. It indicates that not every displacement occurring in the region took place between February 24 and 27, 1997, which raises the necessity of individualizing and identifying the alleged victims and the reasons why they were displaced, in order to establish State responsibility. It considers that the burden of this lies with the petitioners. It alleges that if this were not the case, the displaced persons' right to the truth would be ignored, since the conclusion could be made that they were all displaced by the same events, thereby ignoring the various reasons and moments of displacement at that time.

62. The State alleges that the list of victims submitted by the petitioners lacks evidentiary value, in the sense that it contains an informal relationship of names and does not either refer to, or provide individual evidence of, their residence in the Cacarica basin in February 1997, nor of the events that allegedly caused the forced displacement. It alleges that in spite of this, the State is making the relevant checks in order to cross-reference this list with the Single Displaced Population Registry, in order to verify these individuals' status as displaced persons.

63. Regarding internal displacement, it alleges that since mid 1996 the State has undertaken innumerable actions to assist displaced persons from the Urabá area, and thereby guarantee their rights, based on humanitarian principles and without distinction as to either the reasons why they were forcibly displaced or of the effects at the moment of evaluating the State's alleged responsibility.

64. The State alleges that the Social Solidarity Network (today Social Action) assisted and lent support to approximately 3,500 displaced persons of 23 communities in the Cacarica river basin, and undertook the accompanying, facilitation and follow-up to the process of returning the said displaced communities, who had provisionally settled in Turbo, Bahía Cupica and Bocas del Atrato. It indicates that of these 3,500 persons, approximately 2,300 provisionally settled in Turbo and in the district of Bocas del Atrato, around 200 individuals crossed the border with Panama, and

the rest travelled to other areas of the country such as the Atlantic Coast and the Valle Department. It indicates that the refugees in Panama were repatriated to Colombia and placed at the "El Cacique" farmstead in Bahía Cupica, Bahía Solano district, in the Pacific Coast of Chocó.

65. It stresses that the displaced were located in the municipal stadium of Turbo and in two humanitarian shelters with the funding of international agencies and the Government. It indicates that the Social Solidarity Network supported the competent entities to fulfill the governmental commitments, to the direct benefit of the original 450 families. It indicates that approximately 216 families have returned to their settlements of *Esperanza en Dios* and *Nueva Vida*, in the Cacarica basin.

66. It stresses that Social Action requested the Mayor of Riosucio to promote the fulfillment of the municipality's commitments in the areas of health and education. The request also received support at the ministerial level.<sup>16</sup> It stresses that since November 1999, Social Action has been coordinating access to health services for the displaced through the hospitals of Turbo and Apartadó, that health brigades have been implemented and that medicines were made available to the community that returned to the area.

67. The State indicates that it provided technical and financial support for the implementation of the following phases in the return to the area: (i) exploration, on October 13, 1999; (ii) reconnoiter, in December 1999; (iii) first phase, on February 28, 2000; (iv) the second, on October 13, 2000; and (v) the third and last, between December 2000 and March 1, 2001. It indicates that the conditions for the following stages for return were prepared in the first phases, with regard to the clearing and planting of crops, identification of sites and the start of construction of provisional dwellings in the new settlements. It indicates that in the last phases, there was a continuation of the projects for housing, production and all other activities required for this community's reestablishment after four years of displacement.

68. The State points out that it lent support for the return<sup>17</sup> and prior to the second stage of the return, Social Action supported the family reintegration phase of the displaced community settled in Bahía Cupica with their family members and friends settled in Turbo in September 2000. On this occasion, 201 people relocated.<sup>18</sup> In addition, it indicates that the

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<sup>16</sup> The State indicates that the direct humanitarian attention granted by the Social Solidarity Network to these communities in their settlements consisted of foodstuffs for persons and families belonging to the process of return to the Cacarica: from the month of May 1999 the families settled in Cupica and from January 2000 until December 6, 1999 those settled in Turbo, for the amount of \$1,243,475,664 including food support during all phases of the return. It indicates that in support of the returned communities in the housing and production projects, foodstuffs were delivered in exchange for work, equivalent to 7,500 rations for three hundred families in *Esperanza en Dios* and *Nueva Vida*, for the amount of \$24,324,360. It indicates that the site individualized by the community at Turbo Stadium for the school was refurbished with construction materials for the amount of \$913,400. It indicates that in 1999 it made available the amount of \$5,721,200 for the school's kitchen, educational materials for children and for the classrooms (Cupica-Turbo), for the amount of \$10,040,446 and that also kindergartens received the amount of \$2,569,556, including transport. It indicates that both at the Turbo Stadium and at Lodging No. 1, the State supported minimum works for basic sanitation (draining and conduction of sewage waters) for the amount of \$5'250,048. It indicates that as from February 1999 (including late due payments) and until March 2001, payment for water and electricity services provides by CONHYDRA and EADE to the settlements at the Turbo Stadium was made for the amount of \$68,233,062. Note of the Foreign Ministry, August 27, 2009, para. 103.

<sup>17</sup> It indicates that the support consisted inter alia in the delivery of personal hygiene kits, implements for eating, habitat and kitchen for the amount of \$172,676,618; gas and transport, including the hiring of boats for the amount of \$81,510,369; repairs (in three occasions) of boats and motors for \$27,442,161; and the supply of tools and materials for the household and farm work for the amount of \$40,056,933. Note of the Foreign Ministry, August 27, 2009, para. 106.

<sup>18</sup> The State clarifies that it amounted to \$83,551,875. Note of the Foreign Ministry, August 27, 2009, para. 106.

humanitarian aid provided by the Social Solidarity Network to enable the return and its consolidation amounted to approximately \$52,186,220,648.12.<sup>19</sup>

69. It also points out that in 2004, it provided humanitarian aid to ten Colombian families who were living in Jaqué – Panama, and who were voluntarily repatriated to the land in Nueva Vida. It indicates that the State's actions were not limited to the area and that Social Action provided assistance to the entire community living in the Cacarica basin.<sup>20</sup> However, it stresses that the CAVIDA community refrained from participating, considering it a risk factor for their integrity.

70. It indicates that in 1998, Social Action developed the project "Sanitation and housing improvement in the Cacarica river basin", to provide 418 families with a \$900,000,000 grant for which the *Comision Intereclesial de Justicia y Paz* would be responsible. It indicates that 147 families benefitted from the settlement project.

71. The State points out that in December 1999, the Colombian Institute for Agrarian Reform (INCORA) conveyed the collective title of an area of 103,024 hectares with 3,202 square meters, in the jurisdiction of the Riosucio Municipality, Chocó Department, to the Supreme Community Council of Black Communities of Cacarica. It indicates that this ownership was transferred to 23 Cacarica communities, consisting of 710 families and 3,840 persons, in a ceremonial act in the Turbo Stadium. The State also stresses that it lent agricultural aid to persons in a displaced state.

72. The State considers that the humanitarian aid provided has stopped or lessened the damage arising as a consequence of the displacement, the consequences of the international violation and has repaired the damages caused. It maintains that the doctrine of State assistance must be taken into account at the time of assessing the damages. It indicates that this humanitarian aid addresses all forms of damage as established in the Inter-American System, i.e.: moral damage, material damage, profit and loss, and latent damage. It alleges that this aid has sought to permit the displaced persons' return, has benefitted the displaced persons with housing projects financed by the State and has allowed for ownership of collective lands. It maintains that this aid has addressed damages recognized by the Inter-American Court in other cases on the right to free movement and residence, where the Court has sought to compensate through the so-called "other forms of reparation".

73. The State raises the inadmissibility of the petitioners' allegation as to the violation of the right to life of the allegedly displaced persons, given that it was not admitted in Report No. 86/06. The State alleges that to put forward arguments on the merits different from those set out in the Admissibility Report, disregards the very function of the IACHR; and would affect the State's right to a defense, given that it will be required to discuss the merits of questions to which it did not have the opportunity of presenting observations on admissibility. It maintains that in the interests of upholding the principles of judicial certainty, procedural fairness and the parties' defense in the Inter-American System, it is not appropriate to discuss facts and rights different from those referred to in the Admissibility Report.

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<sup>19</sup> It indicates that it is equivalent to more than USD\$ 1,000,000. Note of the Foreign Ministry, August 27, 2009, para. 108.

<sup>20</sup> It indicates that the Center for the Coordination of Comprehensive Action organized two days of comprehensive assistance in 2005 and one in 2006, in which medical-surgical attention, food, medicines and psycho-social attention were provided; in coordination with the Community-Habitat-Finances (CHF) organization schools were built in the *corregimientos* of Bogota (1), San Higinio (1) and El Limón (1), among others; 150 temporary lodgings were built in San Higinio, Bocas del Limón, La Tapa, Puente América, Santa Lucia, and Barranquilla. It indicates that one of the families residing in Nueva Vida was a beneficiary of these activities.

74. The State alleges that it is not responsible for the alleged violation of the right to personal integrity to the prejudice of the displaced persons. In this regard, it reiterates that an analysis of the alleged violation is necessarily linked to the identification of the alleged victims, as well as to the causal nexus between State action and the situation of displacement. It considers that in the present case, it remains impossible to conclude a violation of personal integrity, linked to the condition of displacement. In addition, with respect to the alleged violation of personal integrity, due to the conditions experienced by the individuals in the Turbo stadium, the State refers to the actions undertaken by the authorities aforementioned and considers that it has complied with its obligation to assist the said population.

75. As regards the alleged violation of the right to protection of the family, the State maintains that this right, in cases of displacement, has been fixed in Principle 17 of the Guiding Principles on Internal Displacement. In this respect, it alleges that it exercised the efforts necessary to maintain the displaced persons' family unity in Urabá at the time of the alleged events. It indicates that as from the end of 1996 assistance and help for the displaced population, as well as the facilitation of their return, was organized on a family basis.

76. Additionally, the State alleges that the petitioners have not adduced individual evidence of the adverse consequences on family protection and have not identified the alleged victims of the alleged violation. It alleges that in the evidence presented, it is clear that this alleged break-up of families or the community is attributable to third parties - and not to the State - by some of the displaced persons settled in the Turbo stadium. It alleges that the Inter-American Court has analyzed alleged violations of personal integrity in relation to the obligation of protection of the family and has concluded that the consequences that the events entail for the family environment must be examined within the guarantee contained in Article 5 of the American Convention. From the foregoing, the State requests from the IACHR the application of the same criterion in the event that it should consider examining the merits of the alleged violation of the protection of the family.

77. The State alleges that to claim the alleged violation of Article 19, as an automatic consequence of the alleged forced displacement is to ignore the autonomous character of each one of the rights protected in the Convention, and that it must be determined whether the violation came about by reason of being a son or daughter of the alleged victim. It maintains that otherwise, the protection of children would be reduced to a mere aggravating factor to international responsibility, requiring a framework of lack of childhood protection as an essential condition. It alleges that for this it is necessary to prove the status of a minor at the time of the violation - which has not been proved - given that the alleged victims have not been identified. Finally, it alleges that the petitioners have not presented evidence on the attribution of individual responsibility for the alleged human rights violations against boys and girls, in the context of the events.

78. The State argues that it is not responsible for the alleged breach of Articles 11 and 21 of the American Convention for the alleged displacement and maintains that Article 11 of the American Convention was not admitted in the Admissibility Report. It alleges that the Inter-American Court has considered as victims of the violation of Article 21 those persons who have identified themselves effectively, and also with respect to whom loss of property has been proved. It alleges that the European Court of Human Rights (ECHR) has also found such responsibility, when the victims were identified, the violation demonstrated and attributable to the State. It alleges that this has not been shown in the present case, so that it turns out to be impossible to assess the State's responsibility, and to confirm whether these persons' rights have been effectively restored, in the case that they belong to the Cacarica communities, on whom the collective title was conferred.

79. The State maintains that it is not responsible for the alleged violation of the right to equality before the law, to the prejudice of those displaced from the Cacarica basin. In this regard, it recognizes the special characteristics of the Colombian Afro-descendant population, and its commitment to take into account this population's special conditions in the determination of public policies. It considers, however, that this discussion is inappropriate in the present case, since it has not been shown that the alleged events were committed as an affront to their character as Afro-descendants. The State reiterates that the alleged displaced persons have also not been individualized and therefore it cannot be presumed that displacement on racial grounds is attributable to the State. From the foregoing, the State considers that it has not either been specifically proved or alleged that the State is responsible for the violation of the right to equality before the law.

80. As regards the alleged violation of the obligations contained in Articles 8.1 and 25 of the Convention, the State remarks that there are two investigations pending before the UDH-FGN relating to the subject matter of the case: No. 426<sup>21</sup> for the crime of conspiracy to commit crimes and No. 2332<sup>22</sup> for the crime of homicide of a protected person - Marino López Mena - forced displacement and conspiracy to commit crimes.

81. As regards the status of the investigation filed under No. 426, the State stresses that it was initiated on July 21, 2001 against General (ret.) Del Río Rojas for the crimes of conspiracy to commit crimes, embezzlement of state property, and corrupt practices by omission. It indicates that, in particular, complaints are under investigation into the General's alleged collusion with illegal self-defense groups, between 1996 and 1997, the period when he acted as Commander of the XVII Brigade.

82. It indicates that having completed the investigation phase in observance of judicial and due process guarantees, and in light of the evidence collected, on December 9, 2004, it was decided not to proceed with an indictment against the suspect with the argument that there was no criminal responsibility for acts or omissions.

83. The State alleges that the serious accusations made by the petitioners on the development of this investigation, and the final decision to close it, have not been proved. It indicates that the motion for review filed by the Procurator General of the Nation on February 18, 2009 against the December 9, 2004, resolution to close the investigation constitutes evidence of the legality of the steps taken by the administration of justice in the said investigation. It indicates that on March 11, 2009, the Criminal Cassation Chamber of the Supreme Court of Justice decided to lift the *res judicata* effect of the Prosecutor's resolution and the corresponding reopening of the criminal investigation, by virtue of new evidence coming to light,<sup>23</sup> not in existence at the time the said resolution was issued. It indicates that the investigation against General Del Río Rojas for conspiracy to commit crimes, is currently at the investigation stage with the 20th Prosecutor of the UDH-FGN.

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<sup>21</sup> The State explains that this investigation was previously identified under numbers 1440 and 5767. Note of the Foreign Ministry, August 27, 2009, para. 170

<sup>22</sup> The State explains that this investigation was identified in the past under number 147301, of the 100th Public Prosecutor of Quibdó. Note of the Foreign Ministry, August 27, 2009, para. 170.

<sup>23</sup> The State indicates that the newly discovered evidence supporting the motion for review, and which served as the basis for the Supreme Court of Justice in its decision, were the voluntary depositions of Héber Veloza García, Salvatore Mancuso Gómez and Jorge Iván Laverde Zapata, within the framework of Law 975 of 2005, and the statement of Elkin Casarrubia Posada. Note of the Foreign Ministry, August 27, 2009, para. 178.

84. The State points out that in the criminal investigation filed as 2332, begun on February 27, 1997, there is an investigation into the events occurring on the same day, perpetrated by an armed group, seemingly belonging to the "Elmer Cárdenas" paramilitary front, who raided the Bijao village, threatening and subjugating various citizens, among them, Marino López, who was murdered. It indicates that there is an investigation into the displacement of persons due to the actions of this group in February 1997 and the murder of a protected person - Marino López Mena - forced displacement and conspiracy to commit crimes. In addition, the State points out that a series of procedural steps were undertaken between 2002 and 2008.<sup>24</sup>

85. The State indicates that Investigation No.2332 holds General (ret.) Del Río Rojas, Luis Muentes Mendoza and Diego Luis Hinestroza Moreno allegedly responsible. It stresses that with regard to the General, various procedural steps<sup>25</sup> have been undertaken and the proceedings are currently in the docket of the Second Specialized Criminal Judge of the Bogotá Circuit. In addition, it points out that with regard to the other two defendants various procedural steps have been taken and preventive detention measures have been issued against them for the charges of homicide of a protected person - Marino López Mena - forced displacement and conspiracy to commit crimes. The State indicates that in this case file William Manuel Soto, Fredy Rendón Herrera and Marino Mosquera Fernández are also under investigation for alleged responsibility for the same criminal offenses.

86. As regards the trial underway in the context of Law 975 of 2005 or Justice and Peace law, the State points out that at least seven demobilized persons from illegal self-defense groups (Fredy Rendón Herrera, Diego Luis Hinestroza Moreno, Luis Muentes Mendoza, William Manuel Soto Salcedo, Franklin Hernando Segura, Rubén Darío Rendón Blanquicet and Alberto García Sevilla) have indicated that they participated in the events of the present case. It indicates that five of them have been accused and are currently subject to preventive detention. It stresses that given that reference was made to the facts in their voluntary depositions, they are currently subject to verification of truth. The State alleges that both the UDH-FGN and the Justice and Peace Unit of the Prosecutor General's Office (hereinafter the "UJP-FGN"), have expended considerable effort to identify and individualize the perpetrators of the alleged events relevant in the present case.

87. The State alleges that participation of the alleged victims and their immediate family is guaranteed in these procedural steps. It points out that the petitioners have not provided information as to whether or not they have participated in the Justice and Peace proceedings, and invited them to participate in order that they make use of the State mechanisms to obtain justice and reparations.

88. With regard to the allegation of undue delay in the judicial proceedings, the State replies that the work of the authorities has been diligent and constant in the face of an investigation

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<sup>24</sup> The State indicates that a number of procedural steps were taken on the following dates, (day/month/year): 04/07/2003, 30/07/2003, 08/08/2003, 9/09/2004, 12/10/2004, 25/10/2005, 11/11/2005, 17/11/2005, 02/02/2006, 10/02/2007, 09/04/2007, 15/05/2007, 22/08/2008, 03/09/2008, 05/09/2008, 08/09/2008, 25/09/2008, 29/09/2008, 27/10/2008, 14/11/2008, 02/12/2008, 24/12/2008 and 24/02/2009. Note of the Foreign Ministry, August 27, 2009, para. 183. (See complete information, *infra* IV.B.9.ii).

<sup>25</sup> The State indicates that on February 24, 2009, the Unit of Delegated Prosecutors before the Superior Court of Bogota decided the appeal lodged by the defense against the Decision to Indict, confirming the aforementioned decision on March 13, 2009. On March 17, 2009, the Public Prosecutor in charge requested the Criminal Cassation Chamber of the Supreme Court of Justice to the transfer of the proceedings from the Mixed Civil and Criminal Circuit of Riosucio (Chocó) to the Criminal Court Circuit for Bogota (Reparto) in order to ensure the impartiality and independence in the administration of justice. On March 24, 2009, the case file was sent to the Justices to continue with the proceedings. The Criminal Cassation Chamber of the SCJ issued an order transferring the proceedings to the Bogota Judicial District. Note of the Foreign Ministry, August 27, 2009, para. 184.

into highly complex events, and that therefore the investigations do not suffer from undue delay and have been conducted in observance of due process guarantees.

89. With regard to the State's obligation to make available judicial remedies for the reparation of the damage caused, it submits that for the duty to make reparation to exist, a responsibility must have been established. After emphasizing its position that this responsibility does not exist, and there is consequently no right to reparations, the State details the judicial remedies available where the alleged victims could have claimed reparations.

90. The State alleges that the right to reparation must be claimed by those allegedly affected by the violations, and therefore it is not an absolute right. It alleges that there are three intertwined aspects to this right: (i) renouncement, (ii) voluntariness, and (iii) the necessity of a verification process. With respect to the first, the State maintains that if it is possible to forego monetary reparations in international tribunals, it is reasonable to assume that this renunciation is also possible in domestic law. It alleges that the absence of a reparations claim by the petitioners through lodging domestic remedies, apart from representing a failure to exhaust domestic remedies, amounts to a tacit renunciation of this hope before the local courts, as well as before the organs of the Inter-American System.

91. With regard to the second, it alleges that when, for reasons beyond the State's wishes, monetary reparations are not claimed by the victims or beneficiaries - within a time limit determined by the Court - it has been established that the said reparations must be reintegrated into the public treasury. It alleges that if the beneficiaries of the said reparations do not claim them within the time set, they lose the possibility of requesting payment. It similarly maintains that within the proceedings for contentious cases before the Court, if the alleged victims are not included in the IACHR's petition brief, the said persons will not be beneficiaries of any eventual reparations before the Court. It considers that if the alleged victims' willingness is not channeled through the plaintiff - the IACHR - in cases before the Court, these alleged victims are excluded from the possibility of reparations in the international proceedings.

92. With respect to the necessity of a verification procedure, the State alleges that reparation is necessarily a result of judicial proceedings, or exceptionally, administrative proceedings; the product of a trial as to liability, in which the reliability of the events is established, attributing them to a defined actor, and the damages caused. It maintains that reparation is not an automatically executable right, but must be alleged before the competent authorities, in conformity with the legal provisions, and both the harmful event as well as the causal relation between it and the alleged victim must be proved. It alleges that this is the procedure that continues to be included in the Inter-American System.

93. The State alleges that Colombia offers three fora to claim reparations, i.e.: (i) a civil claim within the criminal trial, as a *partie civile* when it is alleged that the loss of life is the responsibility of third parties and not of State agents; (ii) a reparations motion within the proceedings of Law 975 of 2005 when it is alleged that the offenses were committed by members of illegal self-defense groups; and (iii) a direct compensation claim before the contentious administrative courts when it is alleged that the events are the responsibility of the State.

94. In this respect, the State points out that in proceedings No. 2332, the *partie civile* claim filed by Emedelia Palacios Palacios' legal representative was admitted. It stresses that by means of this remedy, the victims can not only learn about the state of the investigation, but also actively participate in the proceedings, by presenting allegations of law, or by contributing or requesting evidence, as well as by challenging the decisions taken by the authorities and by requesting reparation for harm caused by a criminal act. Therefore, it alleges that the *partie civile*

has participated in the proceedings with all due guarantees; the State has thereby honored its obligations established in Article 8.1 of the American Convention.

95. The State stresses that in the context of the application of Law 975 of 2005, the seven demobilized who referred to Marino López's death<sup>26</sup> have been indicted by the Justice and Peace Unit of the FGN (UJP-FGN). The victims are entitled to complete participation in these proceedings and an order for reparation *in integrum*<sup>27</sup> embracing material and moral damages, satisfaction measures, guarantees of non-recurrence and measures of rehabilitation, is obtainable.

96. The State alleges that despite the fact that at least five of these seven demobilized are indicted and subject to preventive detention, the petitioners have provided no information with respect to their participation in these criminal actions before the UJN-FGN. In addition, the State invites Mr. López Mena's immediate family, as well as the allegedly displaced persons, to participate in the said proceedings in accordance with its rules, and thus ensure comprehensive reparations.

97. As regards the measures of satisfaction and guarantees of non-recurrence, the State points out that (i) despite the fact that the contentious administrative courts are advancing in the recognition of these types of measures, domestic judgments constitute *per se* a type of reparation, as the Inter-American Court has recognized; and that (ii) however independently the guarantees of non-recurrence may be ordered by the *Conseil d'Etat*, they may be represented by public policies, draft legislation and included in the very criminal investigation.

98. Finally, the State alleges that in the present case, the existence of the contentious administrative remedy, the allegation by the petitioners of the State's responsibility for Marino López's death and for the displacement of persons on the occasion of "Operation Genesis", are inconsistent with the omission in filing of a direct compensation suit claiming for the alleged prejudice caused by the State. The State considers that this constitutes a tacit renunciation of reparations, at least in its monetary aspect. Therefore, based on the principle of subsidiarity, it maintains that it is not appropriate that economic reparations are being claimed directly before the Commission.

#### **IV. ANALYSIS OF THE MERITS**

##### **A. Consideration of the Evidence**

99. Before turning to an analysis of the merits, it is also appropriate for the Commission to rule on the parties' allegations on their appraisal of the context in which the material events of the case occurred. In particular, the petitioners have referred to the context of the armed conflict in Colombia at the time the events occurred and the circumstances prior to February 24, 1997 and subsequent to February 27, 1997, which they consider a framework for a systematic pattern of human rights violations. In addition, they have mentioned the history and contextual events in

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<sup>26</sup> Fredy Rendón Herrera, Diego Luis Hinestroza Moreno, Luis Muentes Mendoza, William Manuel Soto Salcedo, Franklin Hernando Segura, Rubén Darío Rendón Blanquicet, and Alberto García Sevilla. Note of the Foreign Ministry, August 27, 2009, paras. 172 and 209.

<sup>27</sup> The State highlights as an example of the intention to make reparation *in integrum* the judgment given by the Justice and Peace Chamber of the Superior Court of Bogota against the demobilized Wilson Salazar Carrascal which, after establishing the existence of criminal responsibility, decided: "3) To sentence WILSON SALAZAR CARRASCAL, identified by national identity document number 77.131.463 of San Martín, Cesar, also known as "El Loro, Lorenzo or Cepillo" to the main penalty of four hundred and sixty months (460) in prison, for his responsibility in the commission of the crimes of aggravated homicide in the course of repeated offences, extortion and material forging of public documents, crimes the FGN accused him of [...]". It also highlights that material and moral reparations were ordered for the victims. Note of the Foreign Ministry, August 27, 2009, para. 209.

describing the geographic, historical, socio-economic and cultural situation of the area's Afro-descendant communities prior to and during the time of the events.

100. For its part, the State considers it important that the events are set within the historical context without this said context generating its international responsibility. In addition, it considers that the petitioners' contextual submissions have not been duly proved and are based upon information issued by international organizations as a byproduct of their monitoring function and this cannot lead to a prejudging of a contentious case. Therefore, it rejects all those contextual submissions it considers lacking evidence. In addition, it alleges that the contextual submissions in which there is an attempt to establish a nexus between the Security Forces and the self-defense groups as a State policy lack evidentiary support.

101. In this respect, the Commission has established that it is appropriate to appraise the context and the history of the individual case and its impact on the determination of the truth of what occurred, within the framework of its competence.<sup>28</sup>

102. International jurisprudence has recognized the power of the courts to weigh the evidence freely.<sup>29</sup> For its part, the Inter-American Court has pointed out that the proceedings before it are not subject to the same formalities as procedures of domestic law,<sup>30</sup> and that the incorporation of certain elements to the body of evidence must be made paying particular regard to the circumstances of the actual case, and bearing in mind the limits laid down to respect legal certainty and the procedural equalities of the parties.<sup>31</sup> In addition, it has established that international human rights tribunals retain a high degree of flexibility in the evaluation of the evidence submitted to them on the relevant facts, in accordance with the rules of logic and based on experience.<sup>32</sup>

103. As a general practice, the Commission, in the cases before it and where relevant, makes use of information received in its visits to the States, thematic public hearings, annual reports, country and thematic reports, among other devices as a product of its monitoring function of the human rights situation in accordance with its mandate established in the different Inter-American instruments.<sup>33</sup> In addition, it makes use of public and widely known events as well as

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<sup>28</sup> IACHR Report No. 62/08 Manuel Cepeda Vargas, July 25, 2008, paras. 70 and 71.

<sup>29</sup> ICJ. *Corfu Channel Case*, Merits Judgment. Reports 1949, paras. 29-30 and *Case of Nicaragua v. United States of America*, Merits Judgment, Reports 1986, paras. 59-60.

<sup>30</sup> I/A Court H.R. *Case of Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, paras. 127-128.

<sup>31</sup> Cf. I/A Court H.R. *Case of Maritza Urrutia*, Judgment of November 27, 2003. Series C No. 103, para. 48; *Case of Juan Humberto Sánchez*. Interpretation of Judgment on Preliminary Objections, Merits and Reparations. Judgment of November 26, 2003. Series C No. 102, para. 28; *Case of Myrna Mack Chang*, Judgment of November 25, 2003. Series C No. 101, para. 120; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 42; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 41.

<sup>32</sup> Cf. *Case of Maritza Urrutia*, Judgment of November 27, 2003. Series C No. 103, para. 48; *Case of Juan Humberto Sánchez*. Interpretation of Judgment on Preliminary Objections, Merits and Reparations. Judgment of November 26, 2003. Series C No. 102, para. 42; *Case of Myrna Mack Chang*, Judgment of November 25, 2003. Series C No. 101, para. 120; and *Case of Bulacio*, Judgment of September 18, 2003. Series C No. 100, para. 42; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 41.

<sup>33</sup> For instance see IACHR Report No. 62/08 *Manuel Cepeda Vargas*, July 25, 2008, footnotes 102, 107, 108; Report No. 22/08 *Dos Erres Massacre*, March 14, 2008, footnotes 50, 72, 78; Report No. 46/10 *Case of the Río Negro Community of the Maya people and its members*, July 14, 2010, footnotes 2, 12, 14, 22, 26, 37, 51 and Report No. 62/06 *Case of Yvon Neptune*, July 20, 2006, paras. 62 and 63.

reports issued by organizations specialized in the topic under analysis.<sup>34</sup> Therefore, and based on this consistent practice, the Commission will evaluate the context and history of the events in its analysis of the present case.

104. For its part, the State alleges that the statement of the witness Bernardo Vivas Mosquera submitted by the petitioners as evidence of the Security Forces' active participation in Marino López's death does not appear in the case file of the present case and was not sent for rebuttal. In this respect, it is appropriate to state that on March 6, 2009 the IACHR informed the State that in its 2001 visit it received various information on the situation of human rights in Colombia pursuant to its monitoring function, and that it did not take testimony in the framework of individual cases, and did not prepare transcripts. As a result, the information relevant to the claim was that submitted by the petitioners in the context of the individual case. The record of the case shows that the evidence referred to by the State as not present in the Commission's case file was indeed sent to the State in the context of the proceedings in a communication dated July 7, 2009. Therefore, in view of the fact that the State had the opportunity of disputing this evidence, the Commission will consider it in its analysis.

## **B. Factual Determinations**

### **1. The situation of the Afro-descendant Communities in the River Cacarica Basin**

105. The Community Council of the River Cacarica basin is currently comprised of 23 communities located in the Urabá of Chocó, under the jurisdiction of the Riosucio Municipality, Chocó Department, on the left banks of the River Atrato and right banks of the River Cacarica. The River Cacarica basin bounds in the west with the Department of Antioquia. The Cacarica river is one of the tributaries of the Atrato river and rises in the sierras of Darién, on the border with Panama. The constituent communities are: Puente América, Bijao-Cacarica, Quebrada del Medio, Bogotá, Barranquilla, El Limón-Peranchito, Santa Lucía, Las Pajas, Quebrada Bonita, La Virginia, Villa Hermosa- la Raya, San Higinio, Puerto Berlín, Puerto Nuevo, Montañita Cirilo, Bocachica, Balsagira, San José de la Balsa, La Balsa, Bendito Bocachico, Varsovia, Tequerré Medio and La Honda.<sup>35</sup>

106. The Urabá of Chocó, which surrounds the Gulf of Urabá and the frontier with Panama, is a strategic access corridor both to the Pacific as well as the Atlantic Oceans. The only means of access is the river; the area's economy is essentially subsistence and depends on the cultivation of crops, local fishing, hunting and exploitation of wood, whose commercialization "presents huge difficulties derived from the armed conflict."<sup>36</sup> Despite being one of the regions with the world's greatest biodiversity, its predominantly Afro-descendant population<sup>37</sup> lacks enjoyment of the basic necessities.<sup>38</sup>

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<sup>34</sup> For instance see IACHR Report N° 22/08 Dos Erres Massacre, March 14, 2008, footnotes 381, 382, 406, 412; Report No. 46/10 *Case of the Río Negro Community of the Maya people and its members*, July 14, 2010, footnotes 272, 367 and Report No. 62/06 *Case of Yvon Neptune*, July 20, 2006, paras. 88.

<sup>35</sup> Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 7. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>36</sup> Annex 2. The Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>37</sup> The introduction of African slaves for work in the gold mines of Colombia dates back to the 17th Century, the population of African descent experienced notorious growth in the 18th Century. The Afro-Colombians of the Cacarica river basin are descended from the tribal peoples of the Congo and Angola. Annex 3. CAVIDA *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, pp. 21-23.

<sup>38</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 39 in: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

107. In 1993, Law 70 was enacted with the aim of "recognizing the black communities who have come to occupy uncultivated lands in the rural areas on the banks of the Pacific Basin rivers, in accordance with their traditional production methods, the right to collective property" and of establishing measures to protect their cultural identity and the rights of the black communities in Colombia as an ethnic group, as well as to encourage their economic and cultural development, in order to guarantee that these communities enjoy real conditions of equal opportunity along with the rest of Colombian society.<sup>39</sup>

108. The Afro-descendant community councils of the Urabá area, of the banks of the Atrato and its tributaries, and the Naya area have been targets of acts of violence by armed groups fighting to control the area, due to the collective land title claims pursuant with Law 70 of 1993, and the rights enshrined in the 1991 Constitution in recognition of the lands' valuable natural resources.<sup>40</sup>

109. In addition, the illegal armed groups, belonging to the guerillas -predominantly the FARC- and the paramilitaries -the AUC and the ACCU- have used the area as a mobility and access route to the border with the Republic of Panama for arms trafficking and narcotics, and they have cut down the native species in the area to allow the planting of coca,<sup>41</sup> oil palm and bananas.

110. The Afro-Colombian population has been the victim of massacres, targeted executions, disappearances, acts of torture, cruel and inhuman treatment, sexual violence, acts of harassment and threats on the part of the groups engaged in the armed conflict. These groups have sought to extend their control over the territory by forced displacement, terrorizing the civilian population, gathering information on rival groups, and committing acts of "social cleansing"<sup>42</sup>, in particular in the areas of Urabá, the banks of the Atrato and its tributaries in the Department of

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<sup>39</sup> Annex 12. Article 1 of Law 70 of 1993, Official Gazette No. 41.013 of August 31, 1993, through which temporary Article 55 of the Political Constitution is amplified. In: [http://www.secretariasenado.gov.co/senado/basedoc/ley/1993/ley\\_0070\\_1993.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/1993/ley_0070_1993.html).

<sup>40</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 57. En: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

<sup>41</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, paras. 49 and 50. En: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

<sup>42</sup> Information presented to the IACHR at the hearing on the "Human Rights Situation of the Displaced Afro-Colombians in Colombia" taking place in the context of the 131st Period of Ordinary Sessions of the IACHR, March 12, 2008, and in the hearing on "Racial Discrimination and the Afro-Descendants' Access to Justice in Colombia" taking place in the context of the 133rd Period of Ordinary Sessions of the IACHR, October 23, 2008. See Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 55. In: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

Annex 4. Letter of the Displaced Peasant Communities of Riosucio – Chocó to the Administrative Directorate of Human Rights of March 20, 1997. Annex 13 to the petitioners' brief of March 10, 2008. See also: Annex 5. Statement of Cruz Manuel Ramírez before the Special Commission of the UDH and DIH of December 11, 2002. Annex 3 to the petitioners' brief of March 10, 2008. Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH and DIH of December 19, 2002. Annex 4 to the petitioners' brief of March 10, 2008. Annex 7. Foundation for Education and Development FEDES "Forced Displacement of Persons in Colombia – Overall Summary for 1997" Document presented to the 5th Period of Sessions of the United Nations Human Rights Commission (Geneva, Switzerland, March 1997). Annex 5 to the petitioners' brief of March 10, 2008. Annexes 8 and 8 A. Statements of Marco Antonio Cuesta Mosquera and Margarita Bergara Serrana before the Special Commission of the UDH and DIH of December 11, 2002. Annexes 12 and 14 to the petitioners' brief of March 10, 2008. Annex 9. *Tutela* action filed by Hermenegilda Mosquera Murillo before the Criminal Judge, Medellín Circuit. Annex 10 to the petitioners' brief of March 10, 2008

Chocó.<sup>43</sup> The massacres committed in Mutatá (in the corregimiento of Pavarándo, Antioquia) in May 1997 and January 1998; Dabeida (Antioquia) in November 1997; Riosucio (Chocó) in December 1997; Buenaventura (Valle) in May of 2000; and Alto and Bajo Naya (Cauca) in April 2001 are some of the examples of acts of violence committed by the AUC against members of the Afro-descendant communities. In some cases, it is alleged that the acts of violence were committed thanks to the omission, acquiescence or collaboration of members of the Security Forces.<sup>44</sup>

111. With regard to the armed conflict in the Urabá region in the north of the Department of Chocó, in the areas bordering on the river Cacarica basin (known as Bajo Atrato), the Ombudsman's Office of Colombia has reported that large scale forced displacements took place during the course of the 1990's. In effect, it stressed that "at the end of 1996, Colombian armed forces, together with the AUC paramilitary forces, launched an offensive to eradicate the guerrillas from the area of Bajo Atrato."<sup>45</sup> It stressed that this campaign

sought to prevent the guerilla forces from obtaining civilian support, especially from the population living alongside the Atrato river tributaries, areas where the FARC traditionally held a strong presence. In the first phase, the army established controls on the Atrato river, placing strict limits on the quantity of products the residents of these communities could transport. The economic blockade had huge repercussions on these already impoverished communities...The economic blockade lasted several months and was followed by a series of joint army and paramilitary operations causing the mass displacement of many communities of the Riosucio Municipality, in the Bajo Atrato area. Despite the frequent complaints about the upsurge in paramilitary attacks in the area, the government did not adopt any measures to combat and disperse the paramilitary groups nor to protect the civilian communities.<sup>46</sup>

112. The Representative of the United Nations Secretary-General on internally displaced persons, for his part, reported that since 1997, there was an increase in the number of mass and collective displacements in Colombia, frequently of entire communities and that the displacements had become more organized.<sup>47</sup> It indicated that the displacement frequently occurred as the communities complied with specific orders issued by armed groups, in contrast to a more spontaneous decision to flee in order to escape threats against one's physical safety.<sup>48</sup> In addition, the UNHCR March 1998 Report, pointed out that

Forced displacement of the civilian population by the Security Forces and paramilitary groups is being used as a war strategy. In many cases, the population are suspected of forming a

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<sup>43</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 56. In: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

<sup>44</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 56. In: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

<sup>45</sup> Annex 1. The Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>46</sup> Annex 1. The Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>47</sup> Annex 13. U.N. ECOSOC. *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia.* E/CN.4/2000/83/Add.1, 11 January 2000, par. 34. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?OpenDocument>.

<sup>48</sup> Annex 13. U.N. ECOSOC. *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia.* E/CN.4/2000/83/Add.1, 11 January 2000, par. 34. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?OpenDocument>.

base of support for the insurgents and are forced to leave their homes [...] Once the inhabitants have been forced away, the economically or militarily strategic lands are settled by individuals sympathetic to the military forces or paramilitaries, creating security zones necessary to control them.<sup>49</sup>

113. For its part, during its *in loco* visit to Colombia in December 1997, the IACHR received numerous statements revealing individuals' and the State's active and passive discrimination. The complaints drafted by the Afro-Colombians and corroborated by various sociological studies at the time referred to a systematic discrimination, official or otherwise. With respect to this last point, the report indicated that "the offensive stereotyping used by the media, arts and popular culture tends to perpetuate a negative attitude towards the blacks (sic), and these commonly inconsistent views are reflected in the wider society in public policies, when the Government, at various levels, distributes the State's limited resources."<sup>50</sup> The Commission also observed "a favorable acknowledgement by the State at all levels, and in general, by society as a whole, that Afro-Colombians have been the victims of racial discrimination",<sup>51</sup> and that this discrimination persisted and recognized that this discrimination did not form part of a deliberate State policy.

114. During its visit, the IACHR confirmed that the communities displaced from Cacarica had been the target of harassment and violence from paramilitaries since their arrival in Turbo and on December 17, 1997, issued precautionary measures MC 70/99 in favor of those who were located in the "displaced encampments in Turbo, including in the municipal sports stadium and in the settlements built for them".<sup>52</sup>

115. During the precautionary measures proceedings MC 70/99, the State reported about its compliance and the humanitarian assistance provided to the displaced and the petitioners reported about the humanitarian situation and security of the beneficiaries. The petitioners also provided information to the IACHR regarding the murder of:<sup>53</sup> Juan Elio Mena Córdoba (December 26, 1997), Luis Onofre Quintero, Margarito Valoy, Tomás Torres, Licinio Ramos, Boncha Navarro, Candelario Quintana, Jezny Hurtado, José Luis Osorio (September 10, 1998), John Jairo Murillo (January 5, 1999), Rafael Antonio Muñoz (January 1999), Pedro Polo Martínez (February 13, 1999), Miguel Domicó (February 17, 1999), Otoniel Bautista Mantilla (March 22, 2000), Ricardo Antonio Goes Restrepo (March 22, 2000), Antonio Hinestroza Mosquera (March 24, 2000) Alcides Rivero, Víctor Cuesta Mosquera (August 13, 2003), José Luis Osorio, Rafael Antonio Muñoz, Pedro Polo Martínez, Miguel Domicó, Otoniel Bautista Mantilla, Ricardo Antonio Goes Restrepo, Antonio Hinestroza Mosquera and Carlos Alberto Martínez.

116. In the precautionary measures proceedings MC 70/99, the petitioners provided information to the IACHR as to those disappeared: Avisail Chaverra, Manuel Cuesta Palacios,

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<sup>49</sup> Annex 14. U.N. Report of the High Commissioner for Human Rights (UNHCHR) on the Colombia Office, 54th Sessions of the Human Rights Commission. E/CN.4/1998/16, March 9, 1998, para. 97. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument).

<sup>50</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Chapter XI: the Rights of afro Descendant Communities. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 20. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>51</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Chapter XI: the Rights of afro Descendant Communities. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 19. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>52</sup> Annex 10. IACHR's Communication to the State dated December 19, 2001 in the precautionary measures MC 70/99.

<sup>53</sup> Annexes 16, 17, 18 and 19. Briefs of the petitioners in the precautionary measures MC 70-99 received on April 29 1999, May 9, 2001, March 1, 2003 and May 31, 2004.

Rogelio Mosquera (December 31, 1997), Wilson Salazar Martínez, Hernán Vergara (aged 14) (January of 1999)<sup>54</sup>, Juan Villegas Arguello (January 17, 1999)<sup>55</sup> and Manuel Márquez (on April 5, 1999).

117. For its part, the IACHR observed in its Third Report on the Situation of Human Rights in Colombia (hereinafter "Third Report"), 1999, that a large number of Afro-Colombians lived in some of the most war-torn areas of the national territory and it was correct to say in general that fear and violence used by all of Colombia's warring forces have particularly affected Colombians living in conditions of extreme poverty, of which a disproportionate number were Afro-descendants.<sup>56</sup>

118. On January 22, 2004, the Constitutional Court issued Judgment T-025 in which it ruled that the alarming situation of more than three million individuals displaced<sup>57</sup> by violence in Colombia<sup>58</sup> constituted an "unconstitutional state of affairs". It established that there was a massive and ongoing violation of the human rights of the displaced population and that the structural failures in the State's policies were a contributory and pivotal factor.<sup>59</sup> The Court issued orders that included both the State and civil society in the development and application of programs to confront the humanitarian crisis of displacement and to establish procedures to implement its judgment through the design of policies and the holding of periodic public hearings.<sup>60</sup> The Court pronounced on the creation of an action plan to overcome the unconstitutional state of affairs in the light of the lack of public policies towards displacement; making every possible effort to obtain the funding required to assist the displaced population and ensure the effective enjoyment of the essential components of their basic rights.

119. After the visit of the Special Rapporteur on the Rights of Afro-Descendants and Against Racial Discrimination to the Republic of Colombia in 2007, the IACHR observed that Afro-Colombians have been particularly affected by the violence stemming from the conflict and that the scale of violence against the Afro-descendants remains hidden due to a lack of individualized estimates allowing an appreciation of the ways in which they have been affected in comparison to the rest of the population.<sup>61</sup>

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<sup>54</sup> On January 29, 1999, the child Hernán Vergara (aged 14), and Rafael Antonio Muñoz, both displaced and settled in Bocas del Atrato, left to go fishing for three days to the Bahía Margarita. On February 5, 1999, their families and members of the Public Prosecutor's Office found in Bahía Margarita their boat without a motor, nets or equipment. Between February 11, and 12, 1999, the headless body of Rafael Antonio Muñoz was found without legs, with his hand bound, in the place known as "Leoncito" and the whereabouts of Hernán Vergara are still unknown. Annex 16. Petitioners' brief in the proceedings MC 70-99, received on April 29, 1999.

<sup>55</sup> Annex 16. Petitioners' brief in the proceedings MC 70-99, received on April 29, 1999.

<sup>56</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. XI: The Rights of Black Communities. OEA/Ser.L/V/III.102 Doc. 9 rev. 1, February 26, 1999, para. 26. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>57</sup> Second highest number of displaced persons in the world after Sudan. See Annex 20. UN High Commissioner for Refugees (ACNUR), 2009. *2008 Global Trends, Asylum- Seekers, Returnees, Internally Displaced and Stateless Persons*. in: <http://www.unhcr.org/4a374c426.html>.

<sup>58</sup> This judgment collected 108 case files, corresponding to the same number of *tuela* actions lodged by 1,150 families, all belonging to the displaced population. Annex 21. Constitutional Court of Colombia. Judgment T-025-2004 of January 22, 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

<sup>59</sup> Constitutional Court of Colombia. Judgment T-025-2004 of January 22, 2004.

<sup>60</sup> Constitutional Court of Colombia. Judgment T-025-2004 of January 22, 2004.

<sup>61</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 79. In: <http://www.IACHR.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>

## 2. Background of this case

120. According to Ombudsman's Resolution No. 025 by mid 1996 rumors started to circulate that paramilitaries intended to take control of Riosucio in the Department of Chocó (in the Medio Atrato area). On October 6, 1996, members of the ACCU killed various farmers of the Brisas de la Virgen community, located between the Chocó and Antioquia Departments. During the attack, the paramilitaries stated that "they would quickly take control of Riosucio, a city [sic] of the area with strategic importance. With the upsurge in the threats of a paramilitary attack, FARC guerillas established check-points in two areas of the Atrato river. One was in the Puente América community, to the north of the city of Riosucio, and the other, to the south of Riosucio in Domingodó, where the guerillas confiscated food and fuel."<sup>62</sup> It emerged from the statements of the area's inhabitants that the paramilitary groups imposed an economic and food blockade.<sup>63</sup>

121. At the same time, the Security Forces maintained a presence in the area where the events of the present case took place, mainly in the Gulf of Urabá, the Atrato River and its tributaries, through National Police units, the Navy and Brigade XVII of the National Army, stationed in Carepa, Antioquia,<sup>64</sup> the last mentioned being under the command of General Rito Alejo Del Río Rojas.<sup>65</sup>

122. It is apparent from a series of *tutela* actions lodged by those living in Riosucio that "on December 20, 1996, the paramilitaries that controlled RIOSUCIO-CHOCO announced that SALAQUI (in Chocó) was next, which caused a first wave of displacements to Cartagena, Turbo, Quibdó and the Panamanian border." <sup>66</sup>

123. Various reports show that between December 1996 and January 1997, 70 individuals lost their lives in Riosucio during a paramilitary raid, which caused the displacement of hundreds of people.<sup>67</sup> At that time, the members of the Cacarica river communities were pointed out as belonging to the guerillas.<sup>68</sup>

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<sup>62</sup> Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>63</sup> "[In 1997] by the date when threats were overheard that the paramilitary groups were coming in [...] in that came an economic blockade and they started to say that no one could take much food, but only rations, this used to come from the paramilitaries, I learned about it because I had a food store in the Puerto Nuevo Community". Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH and DIH of December 19, 2002, Annex 4 to the petitioners' brief dated March 10, 2008. See also: Annex 5. Statement of Cruz Manuel Ramírez before the Special Commission of the UDH and DIH of December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2008.

<sup>64</sup> Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>65</sup> "On December 11, 1995, Brigadier General Rito Alejo del Río Rojas was named Commander of the XVII Brigade of the National Army with its headquarters in the Carepa Municipality – Antioquia, a command he remained in until December 31, 1997. Annex 22. Review Action 30510 filed by the PGN on February 18, 2009. Annex to petitioners' brief of March 23, 2009.

<sup>66</sup> Annexes 23, 24 and 25. *Tutela* actions lodged by Rosalba Córdoba Rengifo, Pascual Ávila Carmona and Pedro Manuel Pérez Florez in May 1997. Annexes to the initial petition of June 1, 2004 and Annex 26. *Tutela* action lodged by Hermenegilda Mosquera Murillo. Annex 10 to the petitioners' brief dated March 10, 2008.

<sup>67</sup> Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. See also: Annex 14. *Report of the UNHCHR of the Colombia Office*, 54th Period of Sessions of the Human Rights Commission E/CN.4/1998/16, March 9, 1998, para.103. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument). Annex 27. Cf. Amnesty International. Colombia. Return to Hope: the Displaced Communities of Urabá and Medio Atrato, June 2000. At: <http://www.amnesty.org/es/library/info/AMR23/023/2000/es>. See also: Annex 5. Manuel Ramírez's statement before the

124. From the statements of some demobilized members of paramilitary groups<sup>69</sup> before the UDH-FGN and members of the Army,<sup>70</sup> it is apparent that at the time when the facts of the case took place, there were coordinated operations between the paramilitaries and the National Army in the Urabá area.

### 3. "Operation Genesis" and Paramilitary Raids

125. Between February 24 and 27, 1997, a counter-insurgency operation called "Operation Genesis" took place.<sup>71</sup> On February 24, 1997, the Air Force, together with troops of the National Army's XVII Brigade, commenced the military operation with aircraft and helicopter flights and the indiscriminate bombardment of the communities<sup>72</sup> in the Salaquí and Cacarica river basins,<sup>73</sup> causing the displacement of the inhabitants of Cacarica.<sup>74</sup> In accordance with Operational Order No.004/Genesis, the operation was to be developed in three phases with the objective of making a

...continuation

Special Commission of the National Human Rights and Humanitarian Law Unit, December 11, 2002. Annex 3 to the petitioners' brief dated March 10, 2008.

<sup>68</sup> Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. See also: Annex 14. *Report of the UNHCHR of the Colombia Office*, 54th Period of Sessions of the Human Rights Commission E/CN.4/1998/16, March 9, 1998, para.103. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument). Cf. Annex 27. Amnesty International. Colombia. Return to Hope: the displaced Communities of Urabá and Medio Atrato, June 2000. At: <http://www.amnesty.org/es/library/info/AMR23/023/2000/es>.

<sup>69</sup> The demobilized paramilitary Heber Veloza García declared that "at the time that Mr. Rito Alejo was the commander of the XVII Brigade, I met with him at the brigade to coordinate operations in the rural area of Urabá". Annex 28. First interrogation before the Human Rights Unit on October 10 and 15, 2008. Annex 6 to the petitioners' brief received on May 19, 2009. The demobilized paramilitary Fredy Rendón Herrera stated that "during our military campaign in the self-defense groups there were at times some relations with some sectors of the Security Forces". Annex 29. First interrogation before the Human Rights Unit on October 8, 2008. Annex to petitioners' brief of March 23, 2009.

<sup>70</sup> Moisés Machado Córdoba, a member of the XVII Brigade Infantry Battalion No. 46 'Voltígeros' since November 1997, declared that "General Del Río's relation with the paramilitaries was very close and he coordinated operations with them; everybody in Urabá saw it and knows it. One of the things that worried me most was that the General used to lend them range so that they could practice; it's just as I confirmed what people said and my suspicions and the media and what the ONGs said, it was true that the Army worked closely with the paramilitaries, among them General RITO." Annex 30. Statement before the UDH-FGN of July 28, 1999. Annex 2 to the initial petition of June 1, 2004.

<sup>71</sup> Objectives of Operation Genesis: 1. Tamboral, 2. La Loma, 2A Playa Bonita, 3. Regadero, 4. Bocas del Guineo, 4. Caño Seco, 5. Tequerré, 6. Puente América, 7. La Nueva, 8. Clavellino. Annex 32. Annex 2 to the Note of the Foreign Ministry, August 27, 2009. Cf. Annex 31. Official Act No. 01018 DIVII-BR 17-B3-375 of March 6, 1997, pp. 1 and 2. Annex 8 to the petitioners' brief of March 10, 2008.

<sup>72</sup> Cf. Annex 14. *Report of the UNHCHR of the Colombia Office*, 54th Period of Sessions of the Commission for Human Rights, E/CN.4/1998/16, of March 9, 1998, para. 103. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument).

<sup>73</sup> Annex 33. Prequalifying allegations presented before the Prosecutor General's Office in proceedings 5767, by Leonardo Jaimes Marín, legal representative of Father Javier Giraldo, requesting that an indictment decision be laid against General (ret.) Rito Alejo del Río Rojas for crimes against humanity, p.14. Annex 9 to petitioners' brief of March 10, 2009. Cf. Annex 34. Statement made by Fredy Rendón in case files 1042 and 3856 of the UDH on November 7, 2007. Annex 7 to the petitioners' brief received on May 19, 2009. Annex 2. Ombudsman's Office Ombudsman's Resolution No. 025 on the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. Cf. Annex 5. Cruz Manuel Ramírez, before the Special Commission of the UDH and DIH on December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2008. Cf. Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH of December 19, 2002, Annex 4 to the petitioners' brief dated March 10, 2008. Annex 35. Prosecutor's Charge in the partial indictment hearing of Luis Muentes Mendoza, Courts of Justice and Peace in Medellín. Annex 3 C to the Note of the Foreign Ministry, August 27, 2009.

<sup>74</sup> Annex 2. Ombudsman's Office. Ombudsman's Decision No. 025 On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

forceful strike on the 57th squadron of the Narco FARC, and on the 5th, 34th and 58th, who are committing crimes in the jurisdiction of the Minor Operative Unit and to rescue the ten Navy cadets who have been held by these groups of bandits since January 16, 1997, in Juradó (Chocó).<sup>75</sup>

126. Subsequently, on February 25, 1997, military aircraft bombarded different areas of the region,<sup>76</sup> so that another displacement within the area started. In this regard, a member of the ACCU stated that

many villages were already devastated without people since there had been a bombardment and the people had already left, the only part that wasn't bombed was in Vijao (sic); the Army did the bombing.<sup>77</sup>

127. Paramilitary leader Fredy Rendón stated in his voluntary statement that they went into Cacarica and undertook joint operations with the Army, and indicated that Colonel Plazas was aware of this, and they provided him with the maps and guides for "Operation Genesis" requested by the Army.<sup>78</sup>

128. In the early hours of February 26, 1997, 60 members of the ACCU arrived shooting at the Bijao hamlet, which caused some villagers to flee to the mountainous part and discover that the military had surrounded the hamlet. The men fired weapons, and launched grenades on to the roofs of the houses.<sup>79</sup> They rounded up the population and told them to abandon the area with the threat that those arriving soon would eat them alive.<sup>80</sup> Meanwhile they ransacked homes, shelters and stalls, stealing food, identity documents, jewels, clothes and cash. In addition, they shot the outboard motors and burnt an electric generator.<sup>81</sup> They then went to the El Limón community where they also ordered the people to leave for Turbo.<sup>82</sup>

129. On February 26 and 27, there were bombings from military aircraft. With regard to this, one witness stated:

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<sup>75</sup> Annex 36. Colombian Military Forces. National Army's XVII Brigade. Operational Order No.004/Genesis. Annex to petitioners' brief of March 23, 2009.

<sup>76</sup> See Annex 5. Statement of Cruz Manuel Ramírez, before the Special Commission of the UDH on December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2008. Cf also Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH of December 19, 2002, Annex 4 to the petitioners' brief dated March 10, 2008. See also: Annex 37. CAVIDA. *We were always dreaming: Recollections of boys and girls lives who returned to Cacarica*, July 2001. Códice LTDA Publishers. P.22 and 23. Annex to petitioners' brief of March 23, 2009.

<sup>77</sup> Annex 38. Interrogation given by Diego Luis Hinestroza Moreno in case file 2332 before the UDH on August 29, 2008. Annex 8 to the petitioners' brief received on May 19, 2009.

<sup>78</sup> Annex 39. Voluntary video deposition of Fredy Rendón before the Justice and Peace Prosecutor. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009.

<sup>79</sup> Annex 40. Prosecutor's Charge in the partial indictment hearing of Diego Luis Hinestroza Moreno. Courts of Justice and Peace in Medellín, May 30, 2008. Video Annex 3 A to the Note of the Foreign Ministry, August 27, 2009.

<sup>80</sup> Annex 40 and 35. Videos of the Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>81</sup> Annex 3. CAVIDA, *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, p. 95. Annex 1 of the petitioners' allegations on the merits received on March 10, 2008. Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. XI: The Rights of Black Communities. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 45. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>82</sup> Annex 8 A. Statement of Margarita Bergara Serrana before the Special Commission of the UDH on December 11, 2002. Annex 14 of the petitioners' allegations on the merits received on March 10, 2008.

They say that the Caño Seco, Tamboral, Teguerré communities are the ones that have been bombed.<sup>83</sup>

130. On February 27, 1997, a paramilitary group entered the Puente América hamlet and told the population that they would have to move out of the village for three months, that they should leave for Turbo. They set fire to 32 houses, causing the forced displacement of the population to Bocas del Atrato.<sup>84</sup> There they installed a checkpoint where they searched people and then sent them to Turbo "and said that the police would pick them up and take them to the Turbo Stadium, as so it was".<sup>85</sup> In this regard a witness stated

yes, there were bombings on the Cacarica ridge, also known as the catios (sic) park, the planes bombed that part, and with the people so quickly frightened, this bombing lasted like two hours, this was on the 27th, first it was the paramilitaries, then the bombings.<sup>86</sup>

131. On February 27, 1997, ACCU paramilitaries entered the Bocas del Limón community and held the health worker and obliged her to lie on the ground, pointing her out as a collaborator with the guerillas. They called the community together in the community hut and ordered them to leave immediately for a period of two weeks.<sup>87</sup> They told them not to be afraid as the Police would be waiting for them in Turbo. Meanwhile, other men set fire to a food store of the community's Women's Committee and two homes, ransacking the community's belongings.<sup>88</sup> In the afternoon, they ordered the population to move out to Turbo within 24 hours, and warned them that after them "the headhunters were coming."<sup>89</sup>

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<sup>83</sup> Annex 8 A. Statement of Margarita Bergara Serrana before the Special Commission of the UDH on December 11, 2002. Annex 14 of the petitioners' allegations on the merits received on March 10, 2008. Cf. Annex 41. Salaquí, Tamboral and Tequerré. *Tutela* judgment of the first instance judge of the Turbo Civil Circuit of May 29, 1997, in favor of eight plaintiffs. Annex to the original petition of June 1, 2004.

<sup>84</sup> Annexes 8 and 8 A. Statement of Marco Antonio Cuesta Mosquera and Margarita Bergara Serrana before the Special Commission of the UDH and DIH on December 11, 2002. Annexes 12 and 14 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>85</sup> Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH and DIH of December 19, 2002. Annex 12 of the petitioners' allegations on the merits received on March 10, 2008. Cf. Annex 5. Statement of Cruz Manuel Ramírez before the Special Commission of the UDH and DIH on December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2008.

<sup>86</sup> Annex 8. Statement of Marco Antonio Cuesta Mosquera before the Special Commission of the UDH and DIH of December 19, 2002. Annex 12 of the petitioners' allegations on the merits received on March 10, 2008. Cf. Annex 5. Statement of Cruz Manuel Ramírez before the Special Commission of the UDH and DIH on December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2008.

<sup>87</sup> Annex 33. Prequalifying allegations presented before the Prosecutor General's Office in proceedings 5767, by Leonardo Jaimes Marín, legal representative of Father Javier Giraldo, requesting an indictment decision be laid against General (ret.) Rito Alejo del Río Rojas for crimes against humanity, p.14. Annex 9 to petitioners' allegations on the merits of March 10, 2009.

<sup>88</sup> Annex 3. CAVIDA: *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, p. 95. Annex 1 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>89</sup> See in the same sense: Annex 5. Statement of Cruz Manuel Ramírez, before the Special Commission of the UDH on December 11, 2002, Annex 3 to the petitioners' brief dated March 10, 2010; Annex 6. Statement of José Bermudis Valderrama Perea before the Special Commission of the UDH of December 19, 2002, Annex 4 to the petitioners' brief dated March 10, 2008. In 1998, the Office of the UNHCHR in Colombia reported that it had received complaints indicating that in many cases of paramilitary raids against the peasant population, these were preceded by members of the army passing through and recommending to the inhabitants to leave the area, "because after us the headhunters are coming". Cf. Annex 14. U.N. *Report of the UNHCHR of the Colombia Office*, 54th Period of Sessions of the Commission for Human Rights, E/CN.4/1998/16, of March 9, 1998, para. 34. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument). Annex 4. Letter of the Displaced Peasant Communities of Riosucio - Chocó to the Administrative Directorate of Human Rights of March 20, 1997. Annex 13 to the petitioners' brief of March 10, 2008.

132. The report on "Operation Genesis" issued by Brigadier General Rito Alejo Del Río, commander of the 17th Army Brigade, stresses that

the operation was put into effect, and it involved an helicopter attack by BAFER-1 based at Tamboral, aided by ALFA and BETA by CACOM-1 and ALFA and CHARLIE missions with helicopter H-212 and an H-500 by CACOM-2. Likewise contemplating a helicopter attack over the Caño Seco target by BCG35 once assisted by ALFA, BETA and CHARLIE by CACOM-1 and CACOM-2. In this phase of the operation, we contemplated BETA mission over the La Loma target [...]<sup>90</sup>

133. "Operation Genesis" was carried out simultaneously<sup>91</sup> and in coordination with the action of the Elmer Cárdenas paramilitary front. In this regard, former paramilitary leader Fredy Rendón Herrera, aka 'the German', stated before the FGN

we can say that we had been operating in that area since about 1997 without the presence of the Colombian Army when it undertook an operation in the zone located between the Katíos National park and the Turandó river where the National Army undertook an operation called at the time Operation Genesis and troops belonging to the Elmer Cárdenas squadron present over the Cacarica river participated in coordination with some middle rankings officers in the area to rescue some foreigners and the recovery of other dead foreigners, this was done jointly with the army [...]<sup>92</sup>

134. The leaders of the Afro-descendant communities, wishing to establish contact with the armed groups, found three security cordons in their path: the first by the ACCU, the second set up by soldiers of the XVII Brigade and a third consisting of members of the AUC and the XVII Brigade. In this regard, a witness stated the following before the UDH-FGN

we saw the troops coming in by land, sea and air, also paramilitaries and soldiers were going together, I say this because the paramilitaries were carrying their symbol, a red armband with white letters forming the AUC insignia, then we got together to go speak with the army, with a Major called Salomon, he was in the Bocachica community and the surprise we got when we arrived: Major Salomon's guard were the paramilitaries that we passed in the three security cordons, the first there were a hundred paramilitary men who had entered in Cacarica, then some 200 meters further there was another security cordon where there were soldiers, and in the community pitch there was another security cordon shared by the paramilitaries and the soldiers.<sup>93</sup>

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<sup>90</sup> Annex 31. Order No. 01018 DIVII-BR 17-B3-375 of March 6, 1997. Annex 8 to the petitioners' brief of March 10, 2008.

<sup>91</sup> Annex 42. Resolution on the legal status of Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, p.18. Annex to the petitioners' brief received on May 19, 2009. Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. Annex 27. Amnesty International. Colombia. Return to Hope: the Displaced Communities of Urabá and Medio Atrato, June 2000. At: <http://www.amnesty.org/es/library/info/AMR23/023/2000/es>.

<sup>92</sup> Annex 43. Statement made by Fredy Rendón Herrera to the Unit of Delegated Prosecutors before the Superior Court of the Judicial District of Medellín on August 15, 2008. Annex to the petitioners' brief received on May 19, 2009.

<sup>93</sup> Annex 44. Statement of Adán Quinto before the Special Commission of the UDH and DIH of October 8, 2002, in the city of Apartadó. Annex 11 to the petitioners' brief dated March 10, 2008. Annex 42. Resolution on the legal status of Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, p. 20. Annex 1 to petitioners' brief received on May 19, 2009.

135. A member of the ACCU as well as Major Salomón both indicated to the Afro-descendant community leaders that they had to move out and go to Turbo since everything was organized<sup>94</sup> there and the leaders returned to their communities.

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<sup>94</sup> Annex 44. Statement of Adán Quinto before the Special Commission of the UDH and DIH of October 8, 2002, in the city of Apartadó. Annex 11 to the petitioners' brief dated March 10, 2008.

#### 4. Marino López's death

136. On February 27, 1997, in the Bijao hamlet, approximately 60 members of the Elmer Cárdenas paramilitary group under the control of paramilitary commander Ramiro Soto and of Vicente (also Luis) Muentes Mendoza beheaded Marino López, who was in a defenseless state<sup>95</sup> in front of the community.<sup>96</sup>

137. In actual fact, they detained him outside Luis Lemus' house<sup>97</sup> and commanders 'Manito' and 'Diablito'<sup>98</sup> seized him by the arms, he asked them to let him go, and they forced him to remove his shirt and boots and get under a coconut palm from which he took down a bunch, gave them a coconut ready so they could drink the milk.<sup>99</sup> Marino put his boots back on and after an verbal exchange between the armed men, they kicked Marino, forced him to remove his boots again, bound his hands behind his back, kicked him about twice, dropped him, and forcefully pushed him to the banks of the river.<sup>100</sup> After pushing him, one of them took out a machete and "drew a line in the direction of his neck as if to cut off his head".<sup>101</sup> Marino lifted up the right shoulder and received a blow that cut him and made him bleed profusely. Marino López jumped into the river and the armed men shouted at him: "if you leave, it'll only be worse for you."<sup>102</sup> Marino came back in the direction where the armed men were on the banks of the river and one of them reached out his hand. Marino took the hand in order to be helped back over the river bank. As he gripped Marino's

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<sup>95</sup> Annexes 40 y 35. Videos of the Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>96</sup> Annex 42. 14 Prosecutor of the UDH. Resolution on the legal status of Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, p.20. Annex 1 to petitioners' brief received on May 19, 2009. Annex 38. Interrogation given by Diego Luis Hinestroza Moreno in case file 2332 before the UDH on August 29, 2008. Annex 8 to the petitioners' brief received on May 19, 2009. Cf. Annexes 40 and 35 Videos of the Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>97</sup> Annex 40. Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno. Justice and Peace Courts of Medellín. May 30, 2008. Video Annex 3 A to the Note of the Foreign Ministry, August 27, 2009.

<sup>98</sup> Annex 45. Voluntary deposition of William Manuel Soto Salcedo before the Justice and Peace Prosecutor of July 9, 2008. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009.

<sup>99</sup> Annex 46. Letter of the Displaced Peasant Communities of Riosucio- Chocó to Dr. Patricia Luna, of the Administrative Human Rights Department, dated March 20, 1997. Annex 13 to the petitioners' brief dated March 10, 2008. Annex 33. Annex 33. Prequalifying allegations presented before the Prosecutor General's Office in proceedings 5767, by Leonardo Jaimes Marín, legal representative of Father Javier Giraldo, requesting that an indictment decision be laid against General (ret.) Rito Alejo del Río Rojas for crimes against humanity. Annex 29. Interrogation given by Fredy Rendón Herrera before the UDH on October 8, 2008. Annex 5 to the petitioners' brief received on May 19, 2009. Sworn affidavit for procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009. Annex 48. Voluntary deposition of Alberto García Sevilla before the Justice and Peace Prosecutor of October 28, 2008. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009.

<sup>100</sup> Annex 46. Letter of the Displaced Peasant Communities of Riosucio- Chocó to Dr. Patricia Luna, of the Administrative Human Rights Department, dated March 20, 1997. Annex 13 to the petitioners' brief dated March 10, 2008. See also prequalifying allegations presented before the Prosecutor General's Office in proceedings 5767, by Leonardo Jaimes Marín, legal representative of Father Javier Giraldo, requesting an that indictment decision be laid against General (ret.) Rito Alejo del Río Rojas for crimes against humanity, p.14. Annex 9 of the petitioners' allegations on the merits received on March 10, 2008. Annex 47. Sworn affidavit for procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

<sup>101</sup> Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

<sup>102</sup> Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

left hand, the one nicknamed 'Manito' cut off his head with a machete blow.<sup>103</sup> 'Manito' said: "that's so that they believe it".<sup>104</sup>

138. In this regard, a witness stated that

Marino López's body was left on the river bank, they cut off his arms at the elbow, his legs up to his knees, and with the point of the machete they opened up his stomach and let the body roll down the bank until it touched the water.<sup>105</sup> His hands remained tangled in the branches of a fallen orange tree, they carried his head like a trophy in the palms of their hands and threw it onto a clearing, saying: "look at him, he's got a face like a monkey the s.o.b." and displayed his head to the population as a warning sign. When Marino's head fell to the floor, they started to kick it like a ball between themselves, passing it to each other for approximately ten minutes.<sup>106</sup>

139. Another witness stated that

they dragged him to the beach half dead and started to chop him in bits, they chopped his arms and legs off, then they cut off his head, and played football with it in front of Luis Lemus' family, then after that they told the community to fetch it and bury it and said to the community that that was nothing, they had done nothing, and after them would come someone else who was going to eat people, with the community petrified."<sup>107</sup>

140. The Prosecutor's Office concluded that Marino López's death was not an isolated incident but that it had occurred in a premeditated context with specific objectives, "that is to say to terrorize the population to ensure their forced displacement".<sup>108</sup> The Justice and Peace Prosecutors charged the alleged perpetrators with the aggravated murder of Marino López for terrorist purposes.<sup>109</sup> The murder achieved its aim, provoking another wave of displacements.<sup>110</sup> Some inhabitants of Bijao were threatened and detained.<sup>111</sup>

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<sup>103</sup> Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009. Evidence of eyewitness Bernardo Vivas Mosquera. Annex 29. Interrogation given by Fredy Rendón Herrera before the UDH on October 8, 2008. Annex 5 to the petitioners' brief received on May 19, 2009. Cf. Annex 34. Statement made by Fredy Rendón in case files 1042 and 3856 of the UDH on November 7, 2007. Annex 7 to the petitioners' brief received on May 19, 2009, and Annex 38. Interrogation given by Diego Luis Hinestroza Moreno case no. 2332 before the UDH on August 29, 2008. Annexes 7 and 8 to the petitioners' brief received on May 19, 2009. Annexes 40 and 35. Videos of the Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>104</sup> Annex 45. Voluntary deposition of William Manuel Soto Salcedo before the Justice and Peace Prosecutor of July 9, 2008. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009. Cf. Voluntary deposition of Rubén Darío Rendón Blanquicet before the Justice and Peace Prosecutor of July 17, 2008. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009.

<sup>105</sup> Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

<sup>106</sup> Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

<sup>107</sup> Annex 44. Statement of Adán Quinto cited in: 14 Public Prosecutor of the UDH. Resolution on the legal status of Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, p.20. Annex 1 to the petitioners' brief received on May 19, 2009.

<sup>108</sup> Annex 42. 14 Prosecutor of the UDH. Resolution on the legal status on Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, pp.17-18. Annex 1 to the petitioners' brief received on May 19, 2009.

<sup>109</sup> Annexes 40 and 35. Videos of the Prosecutor's Charges in the partial indictment hearing of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>110</sup> Annex 42. 14 Public Prosecutor of the UDH. Resolution on the status of Rito Alejo Del Río Rojas, case no. 2332 of September 12, 2008, pp.17-18. Annex 1 to the petitioners' brief received on May 19, 2009. Cf. Annexes 40 and

141. Marino López's head was thrown into the river and found some days afterwards. His remains were clearly identified in February 2007, so that his decease was finally registered.<sup>112</sup>

## 5. The Forced Displacement

142. As a consequence of the attacks and acts of violence occurring in the context of "Operation Genesis", approximately three thousand five hundred people were displaced from the Cacarica basin, of whom around two thousand three hundred settled temporarily in the Turbo municipality, in the Department of Antioquia, and in Bocas del Atrato; around two hundred crossed the frontier with Panama; the rest were displaced to other areas of Colombia.<sup>113</sup>

143. After the first bombardment in the afternoon of February 24, 1997, the displacements started, with persons seeking refuge in the Turbo municipality. The displacements caused families to split up.<sup>114</sup>

144. Some boys and girls displaced from Cacarica gave the following accounts:

We ran off when we saw how they were killing our brothers and sisters...When the planes and helicopters came overhead and the bombs fell, boys and girls were running from one hamlet to another... Some children jumped naked through the bushes. Desperate mothers were looking for their children in the mountains...Everyone trying to escape.<sup>115</sup>

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...continuation

35. Videos of the presentation of the delegated prosecutor of the PGN in the partial indictment hearings of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>111</sup> They detained Bernardo Vivas, at whom the Paramilitary Richard shouted: "We're going to kill you". Another paramilitary said to his companions: "leave this person alone", and they let him go; to a mother head of household at home the Paramilitary Taolamba said: "We're going to shag you too", and to two members of the community tied up face down on the ground and one of the armed men put his foot on them, they took them bound as guides to the other communities, and were then released. Annex 47. Sworn affidavit for extra-procedural purposes No. 8522 of April 3, 2009 of the witness Bernardo Vivas Mosquera. Annex to the petitioners' communication received on May 19, 2009.

<sup>112</sup> Annexes 40 and 35. Videos of the Prosecutor's Charges in the partial indictment hearings of Diego Luis Hinestroza Moreno of May 30, 2008 and of Luis Muentes Mendoza, 2008, Courts of Justice and Peace in Medellín. Annexes 3 A and C to the Note of the Foreign Ministry, August 27, 2009.

<sup>113</sup> Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia.* E/CN.4/2000/83/Add.1, 11 January 2000, para. 36 At: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument> and Annex 27. Amnesty International. Colombia. Return to Hope: the Displaced Communities of Urabá and Medio Atrato, June 2000. At: <http://www.amnesty.org/es/library/info/AMR23/023/2000/es>.

<sup>114</sup> "We were lucky, all managed to get out together, males and women with their children. But today some have still stayed fleeing into the mountains, some girls, some boys, mothers and fathers, grandfathers. When the bombing started it was in the day, but our daughter was working in the allotment, we've had no news about her". Annex 50. *To the last Dead and to the last Exile: Displaced Communities of Chocó.* By Danilo Rueda. In: Intercongregational Commission of Justice and Peace. S.O.S. complaint Solidarity with the Displaced People of Medio Atrato. Vol. 2, No. 4 January-March 1997, p. 64. From the proceedings in MC 70-99.

<sup>115</sup> Annex 37. CAVIDA. *We were always dreaming: Recollections of boys and girls lives who returned to Cacarica,* July 2001. Códice LTDA Publishers. p. 23. Annex to petitioners' brief of March 23, 2009.

145. On February 27, 1997, the fear caused by Marino López's murder prompted the displacement from the Bijao farmstead to Turbo and Bocas del Atrato.<sup>116</sup> Some packed rafts and went towards Panama.<sup>117</sup> From noon on February 28, 1997, for eight hours, around three thousand five hundred individuals were displaced. The figures show that due to "Operation Genesis" and its effects on the surrounding basins, ten thousand persons left the Cacarca basin.<sup>118</sup>

## 5.1 The Municipality of Turbo

146. Those people who were displaced to Turbo were received by the Urabá Police.<sup>119</sup> The police transferred them in dump trucks and carts to the municipal sports stadium,<sup>120</sup> where almost all the 23 displaced communities<sup>121</sup> were horded, and thereafter they stayed in two lodges built with the support of international agencies.<sup>122</sup>

147. On March 20, 1997, the stadium held 320 families (1,150 individuals of whom 549 were children) and every day between three and five families were arriving with a average of 12 members in each one.

148. The living conditions in the displacement camps were difficult and throughout February 1999, there were already some three hundred and thirty displaced persons in conditions of extreme overcrowding and exposed to the elements.<sup>123</sup> The majority of the displaced were sleeping

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<sup>116</sup> Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004.

<sup>117</sup> Annexes 8 and 8 A. Statement of Marco Antonio Cuesta Mosquera and Margarita Bergara Serrana before the Special Commission of the UDH and DIH on December 11, 2002. Annexes 12 and 14 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>118</sup> Annex 1. Colombian Constitutional Court, Judgment T-955/2003 of October 17, 2003. Annex of the petitioners' allegations on the merits received on March 10, 2008.

<sup>119</sup> Annexes 8 and 8 A. Statement of Marco Antonio Cuesta Mosquera and Margarita Bergara Serrana before the Special Commission of the UDH and DIH on December 11, 2002. Annexes 12 and 14 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>120</sup> Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia. E/CN.4/2000/83/Add.1, 11 January 2000. par. 35. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>.*

<sup>121</sup> *Inter alia*: Villa Hermosa - La Raya, San Higinio, Barranquillita, San José de La Balsa, Bocachica, Teguerré, Bocas del Limón, Bogotá, Puerto Berlín, Varsovia, Balsagira, Bijao Cacarca, La Virginia, Quebrada Bonita, Quebrada del Medio. Annex 51. Colombian Military Forces, National Army, XVII Brigade, Report on the Situation of the Displaced, May 7, 1997. Annex 17 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>122</sup> "In November 1999, around 52 families were living in the Stadium, 56 in Lodging No.1 or "Santo Ecce Homo", 22 in Lodging No.2 or "Madre Laura", and around 200 in the peripheral outskirts of Turbo" and that the majority stayed in Turbo for approximately three years. Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. Annex to the initial petition of June 1, 2004. Cf. Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 3. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008. Cf. Annex 27. Amnesty International. Colombia. Return to Hope: the Displaced Communities of Urabá and Medio Atrato, June 2000. At: <http://www.amnesty.org/es/library/info/AMR23/023/2000/es>. See also Annexes 8 and 8 A. Statement of Marco Antonio Cuesta Mosquera and Margarita Bergara Serrana before the Special Commission of the UDH and DIH on December 11, 2002. Annexes 12 and 14 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>123</sup> IACHR visit to the dwellings of the Turbo Stadium in the Apartadó municipality. Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Ch. VI, paras. 45 and 46. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. Letter of the Displaced Peasant Communities of Riosucio - Chocó to the Administrative Directorate of Human Rights of March 20, 1997. Annex 13 to the petitioners' brief of March 10, 2008.*

on the ground and then in beds one beside the other in a large open space inside the Stadium, with no privacy.<sup>124</sup> The food assistance provided by the Government (25,000 every two weeks) was insufficient.<sup>125</sup> Despite Government promises, the shelters had no gas for cooking and the water was insufficient for the number of people.<sup>126</sup> In November 1997, aid was officially suspended for 75 families due to lack of resources. Disease and danger of an epidemic increased, especially among the children who in some cases showed signs of advanced malnutrition,<sup>127</sup> diarrhea, vomiting and skin rashes due to the water provided.<sup>128</sup> The displaced lacked access to basic health services, food, housing, education and hygiene.<sup>129</sup>

## 5.2 Bocas del Atrato

149. Those who displaced towards Bocas del Atrato left in the afternoon of February 24, 1997, and arrived at Bocas del Atrato the following morning. 23 families (70 individuals) settled in a village schoolroom or with local families, where they stayed for approximately three years before returning to their lands.<sup>130</sup>

## 5.3 Panama

150. Around three hundred people displaced on foot to Panama,<sup>131</sup> and some boys and girls were lost in the jungle. In this regard, one displaced person stated:

I found many children walking alone through the jungle, lost, with no one guiding them. Some nephews were walking there too, I recognized them, picked them up, and put them to sleep. The last boatload was leaving and I had ten children ages one to five, naked, without

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<sup>124</sup> See photo in: Annex 3. CAVIDA. *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, p. 159. Annex 1 of the petitioners' allegations on the merits received on March 10, 2008. Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Ch. VI, para. 46. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>125</sup> Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia*. E/CN.4/2000/83/Add.1, 11 January 2000. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>.

<sup>126</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, para. 46. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>127</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, para. 46. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>128</sup> Annex 4. Letter of the Displaced Peasant Communities of Riosucio – Chocó to the Administrative Directorate of Human Rights of March 20, 1997. Annex 13 to the petitioners' brief of March 10, 2008.

<sup>129</sup> Cf. Annex 14. U.N. *Report of the UNHCHR of the Colombia Office*, to the 54th Period of Sessions of the Commission for Human Rights, E/CN.4/1998/16, of March 9, 1998, paras.101 and 187. At: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument). Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Addendum. Profiles in displacement: follow-up mission to Colombia*. E/CN.4/2000/83/Add.1, 11 January 2000, paras. 91, 92 and 187. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>.

<sup>130</sup> Annex 4. Letter of the Displaced Peasant Communities of Riosucio – Chocó to the Administrative Directorate of Human Rights of March 20, 1997. Annex 13 to the petitioners' brief of March 10, 2008.

<sup>131</sup> Annex 8. Statement of Marco Antonio Cuesta Mosquera before the Special Commission of the UDH and DIH of December 11, 2002. Annex 12 of the petitioners' allegations on the merits received on March 10, 2008. Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Addendum. Profiles in displacement: follow-up mission to Colombia*. E/CN.4/2000/83/Add.1, 11 January 2000. para. 36. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>.

clothes. I went back to the Bijao hamlet. I asked a boatload leaving if they could take me or at least the children. It is very hard to walk in the mountains with a child suffering from hunger, with so many mosquitoes; they took pity on us and took the children only, since there was no room for me and I stayed in Bijao.<sup>132</sup>

151. This group erected makeshift camps in the Darién area of Panama, but shortly afterwards the displaced were told that they could not remain in this neighboring country. According to the displaced farmers, the petitions that they filed before the Colombian Government for their return were dismissed, and they were forced to return to Colombia without the guarantees they sought.<sup>133</sup> Some were taken initially to Apartadó, in the Antioquia Department, to a shelter where they were packed together without adequate health facilities.<sup>134</sup> An important group was taken by force<sup>135</sup> by the State of Colombia to Bahía Cupica in the Department of Chocó and settled in the "El Cacique" farmstead. Despite this, the State did not provide them with adequate humanitarian aid such as sufficient food and only rarely were they given meat to cook. They only had access to one doctor for all the displaced and there were no medicines for serious illnesses.<sup>136</sup>

## 6. Events Subsequent to the Displacements

152. Subsequent to the events of February 1997, the displaced continued to be the targets of human rights violations in the settlements.<sup>137</sup> As from March 12, 1997, the petitioners informed a number of State entities of the situation. They issued *constancias* with public statements explaining what was happening in Urabá of Antioquia; they lodged requests for information with the then President of the Republic, his Counsel for Human Rights and the Ministries of the Interior, Defense, Justice and Foreign Relations; the Prosecutor General; the Procurator General; and the Ombudsman.<sup>138</sup>

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<sup>132</sup> Annex 3. CAVIDA. *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, p. 159. Annex 1 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>133</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, para. 51. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>134</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, paras. 51 and 52. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>135</sup> Cf. Annex 13. U.N. ECOSOC *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47. Add. Profiles in displacement: follow-up mission to Colombia*. E/CN.4/2000/83/Add.1, 11 January 2000. para. 36. At: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>. See also Annex 52. U.S. Committee for Refugees, *Colombia's silent crisis: One million displaced by violence*, Washington D.C., March 1998, pp.16 and 17.

<sup>136</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, para. 53. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002 Annex to the initial petition of June 1, 2004.

<sup>137</sup> "The displaced persons settled in the Bahía Cupica encampments, Department of Chocó have been the target of death threats and acts of harassment by paramilitary groups." Annex 14. *Report of the UNHCHR of the Colombia Office, to the 54th Period of Sessions of the Commission for Human Rights*, E/CN.4/1998/16, of March 9, 1998, paras. 100 and 187. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument).

<sup>138</sup> Annex 53. Urgent Action sent by the Inter-Congregational Commission of Justice and Peace on the situation in the Urabá region to the President of the Republic, Ernesto Samper Pizano, Interior Ministry, Foreign Ministry, Ministry for Justice and Law, FGN, PGN, Ombudsman, and Presidential Council for Human Rights of March 12, 1997. Annex to the initial petition of June 1, 2004.

153. The IACHR undertook an *in loco* visit to Colombia between December 1 and 8, 1997 during which it visited the stadium and the dwellings in Turbo.<sup>139</sup> Based on the information received during and after its visit, on December 17, 1997, the Commission issued precautionary measures to protect the life and personal integrity of these displaced persons.<sup>140</sup> For example, members of paramilitary groups turned up from time to time at the dwellings. On December 11, 1997, two armed paramilitaries entered the stadium, looking for a displaced man, and on December 14, another paramilitary was seen inspecting a dwelling.<sup>141</sup>

154. Paramilitary raids, food blockades, confiscations, violence, deaths, and disappearances continued in the settlements. The displaced were in a situation of risk and their living conditions were cramped and lacking in basic services.<sup>142</sup> In view of this, they wrote a request to the authorities with five items including truth, justice and moral reparation.<sup>143</sup>

155. In 1998, Social Action presented a blueprint to improve housing for 418 families. The petitioners were responsible for the subsidy<sup>144</sup> and 147 families benefitted from the said project.<sup>145</sup>

156. In 1998, the Office of the United Nations High Commissioner reported that it was no coincidence that the areas with intense guerilla and paramilitary activity happened to be rich in natural resources.<sup>146</sup> The Office held the view that "no small number of violent events committed

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<sup>139</sup> "The Commission observed during its visit that the violence in Colombia has been the main cause of internal forced displacement for a large number of people. In its trip to Urabá, for example, the Commission had the opportunity of visiting in Turbo the encampment of displaced persons originating in Riosucio. In these locations, the Commission noted that the majority of the displaced are women and children living in inhuman conditions. They complain that they fled from the normal places of residence as a result of the acts and threats of violence committed against them by the Army, acting in collaboration with paramilitary forces". Annex 54. IACHR. Press Release No. 20/97, para. 34. See: <http://www.cidh.org/Comunicados/Spanish/1997/Comunicados%2014-21.htm#20>

<sup>140</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Ch. VI, para. 47. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. Annex 55. IACHR Annual Report, 1997, OEA/Ser.L/V/II.98 Doc. 6, February 17, 1998, Ch. III.2.A, section on precautionary measures granted in respect to the Republic of Colombia.

<sup>141</sup> Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Cap. VI, para. 47. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>142</sup> Annex 26. Tutela filed by Hermenegilda Mosquera Murillo before the Criminal Judge, Medellin Circuit. Annex 10 to the petitioners' brief of March 10, 2008. Annex 46. Letter of the Displaced Peasant Communities of Riosucio- Chocó to Dr. Patricia Luna, of the Administrative Human Rights Department, dated March 20, 1997. Annex 13 to the petitioners' brief dated March 10, 2008. Annex 13 to the petitioners' brief of March 10, 2008. See also Annex 37. CAVIDA: We were always dreaming: Recollections of boys and girls lives who returned to Cacarica, July 2001. Código LTDA Publishers. p.28. Annex to petitioners' brief of March 23, 2009.

<sup>143</sup> *Our List of Demands*. Mimeograph, December 1997. On April 20, 1998, in a meeting with President Ernesto Samper Pizano, a list of demands was handed over for a dignified return. The last point of the proposed dialogue encompassed the moral reparations which covered the investigation, punishing those responsible for the displacement and the offenses committed against the Cacarica communities; the publication of a book; the making of a documentary video; the production of a radial series with the communities' history and the construction of three monuments. Petitioners' allegations on the merits received on March 10, 2008. Annex 15. IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Ch. VI, para. 60. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>144</sup> Taking place with a contribution of \$144,908,450 and the community's contribution corresponding to \$355,140,920. Note of the Foreign Ministry, August 27, 2009, para. 111.

<sup>145</sup> Note of the Foreign Ministry, August 27, 2009, para. 111.

<sup>146</sup> Cf. Annex 13. U.N. ECOSOC. *Specific groups and individuals: Mass exoduses and displaced persons. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47*. Add. Profiles in displacement: follow-up mission to Colombia. E/CN.4/2000/83/Add.1, 11 January 2000, para. 23. At: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument>.

by the paramilitaries are perpetrated with the tolerance or even the complicity of public servants, especially members of the military forces and the national police [...]"<sup>147</sup>

157. On January 11, 1999, the Commission confirmed the continuance of the precautionary measures, in favor of the persons who were in the displaced encampment in the Turbo Stadium and in Bocas del Atrato.<sup>148</sup>

158. In February 1999, a sector of the Cacarica community declared themselves as a Peace Community called "Community for Self-determination, Life and Dignity" (CAVIDA), with the aim of returning to their land in conditions of dignity and security.<sup>149</sup>

159. On April 26, 1999, the Colombian Institute for Agrarian Reform (INCORA) issued resolution No. 0841 conveying collective lands to the black communities organized in the Community Council of the Cacarica river basin, in terms of "lands of black communities".<sup>150</sup>

160. On September 2, 1999, the National Directorate for the Environment presented a report to the Community Council of the River Cacarica, revealing that on the displaced persons' land there were lumber works with development encampments.<sup>151</sup>

161. On December 13, 1999, an "Agreement for return between the Cacarica Basin Displaced Communities Temporarily Settled in Turbo, Bocas de Atrato and Bahía Cupica and the National Government" was signed. The agreement included a number of aspects to be developed by the Government to ensure the definitive return of these communities.<sup>152</sup>

162. On December 15, 1999, in a signing ceremony taking place in the Turbo Stadium, the Colombian Institute of Agrarian Reform (INCORA) handed over the collective title to an area of 103,024 hectares with 3, 202 square meters, located in the jurisdiction of the Municipality of Riosucio, Department of Chocó, to the Supreme Community Council of Cacarica Black

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<sup>147</sup> Cf. Annex 14. *Report of the UNHCHR of the Colombia Office, to the 54th Period of Sessions of the Commission for Human Rights*, E/CN.4/1998/16, of March 9, 1998, para. 90. At: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument).

<sup>148</sup> Annex 56. IAHCR Annual Report, 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. April 16, 1999, Ch. III, para. 22.

<sup>149</sup> The peace communities were created in order not to participate in a direct or indirect way in the armed conflict, not to carry firearms, not to lend support of any kind to the participants in the conflict, to issue its own rules and act upon them, to carry the standards of the community with responsibility, bind themselves to a political and negotiated exit from the armed conflict, strengthen community work and to defend their national identity and their land. The peace communities request that the participants in the conflict: respect their living and work areas, respect to free displacement, lifting the restrictive food regime, avoid armed political proselytism within the community, respect for their views and non-violent action, respect for their rights as citizens and for international humanitarian law, respect for their principles and their autonomy, to refrain from taking reprisals against the community by persons who turn to armed groups. Annex 1. Constitutional Court. Judgment T-955/2003 of October 17, 2003, pp. 5, 6 and 42. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>150</sup> Annex 1. Constitutional Court. Judgment T-955/2003 of October 17, 2003, p. 5. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>151</sup> Annex 1. Constitutional Court. Judgment T-955/2003 of October 17, 2003, pp. 38 and 39. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>152</sup> Aspects such as: humanitarian assistance until the families can guarantee their own subsistence, documentation, construction of 418 dwellings, the formal handing over of the Resolution adjudicating the collective lands of their community, on December 15, 2000, in Turbo, development of protective measures, cleaning up and channeling of the depths of the Perancho and Peranchito. Annex 57. Agreement for return between the Cacarica Basin Displaced Communities Temporarily Settled in Turbo, Bocas de Atrato and Bahía Cupica and the National Government. Annex to the original petition of June 1, 2004. Cf. Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 7. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

Communities.<sup>153</sup> This Community Council comprises 23 Cacarica communities, 710 families and a total of 3,840 individuals.

163. In addition between January and December 2000, the State provided food to those engaged in the process of return to Cacarica, at a cost of approximately \$11,154,769,286.00.<sup>154</sup>

## 7. The Return

164. The forced displacement of these communities lasted four years, from February 1997 until March 2001. In this respect, one of the displaced indicated:

I'm going to refer a little bit to how my family and personal life is. I have a very sad and painful history. After the displacement I came to lose my family, I lost my wife and four children, I lost everything [...] that is the date, four years ago, since I've seen her. I have a three-year-old son I don't know. The displacement destroyed my family unity, wrecked my family, I'm finished."<sup>155</sup>

165. On January 31, 2001, the process of return and resettlement of the displaced on their lands began. In the first phase, 270 returned, in the second 84 and then 450. In the last phase, in March 2001, approximately 150 persons returned. This process took place under State protection and with the help of the international community for two settlements called: "Esperanza en Dios" and "Nueva Vida".<sup>156</sup>

166. The State lent technical and financial support for the implementation of the following phases for the return to the area: (i) exploration, on October 13, 1999; (ii) reconnoiter, in December 1999; (iii) first phase, on February 28, 2000; (iv) the second, on October 13, 2000; and (v) the third and last, between December 2000 and March 1, 2001.<sup>157</sup> During the first phases, the conditions for the following stages for return were prepared, and in the last phases, there was a continuation of the projects for housing, production and all other activities for this community's reestablishment.<sup>158</sup>

167. The State supported the family reintegration phase for the displaced community settled in Bahía Cupica with their family and friends living in Turbo in September 2000, with the transport of 201 persons.<sup>159</sup> In 2004, ten families who were living in Jaqué - Panama, were voluntarily repatriated to "Nueva Vida" and the State lent them humanitarian aid. The State took action in the Cacarica basin aimed at assisting the communities, from which one family of "Nueva Vida" benefitted.<sup>160</sup>

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<sup>153</sup> INCORA Decision No. 841, of April 26, 1999. Note of the Foreign Ministry, August 27, 2009, para. 113.

<sup>154</sup> Annex 58. Note of the Foreign Ministry of April 24, 2001, of the proceedings in MC 70-99, received on April 25, 2001.

<sup>155</sup> Annex 3. CAVIDA. *We are part of the land of this Land: Recollections of a Civilian Resistance*, Cacarica, 2002, p. 159. Annex 1 of the petitioners' allegations on the merits received on March 10, 2008.

<sup>156</sup> Annex 1. Constitutional Court. Judgment T-955/2003 of October 17, 2003, pp. 7 and 8. Annex 15 to the petitioner's brief received on March 10, 2008.

<sup>157</sup> Note of the Foreign Ministry, August 27, 2009, para. 104.

<sup>158</sup> Note of the Foreign Ministry, August 27, 2009, para. 105.

<sup>159</sup> Note of the Foreign Ministry, August 27, 2009, para. 106.

<sup>160</sup> Days of Comprehensive Assistance in 2005 and one in 2006 for medical and surgical assistance, food, medicines and psychological assistance. In coordination with the Community Habitat Financial Organization (CHF), schools were built in the corregimientos of Bogotá (1), San Higinio (1) and El Limón (1), and 150 temporary shelters were

168. The precautionary measures issued by the IACHR continued to be in force for the persons returning to "Esperanza en Dios" and "Nueva Vida". The threats and acts of violence continued against these settlements. On June 8, 2001, the IACHR requested that the State persist with the measures of protection, in view of the fact that a group of paramilitaries had raided the "Esperanza en Dios" settlement and had held 20 of its members.<sup>161</sup>

169. On September 7, 2001, the Administrative Court of Cundinamarca protected the fundamental rights of the Cacarica river communities to health in conjunction with life, to tranquility, and to obtain a response from the authorities to their petitions, when taking into account that the plaintiffs pointed out that the communities

had been displaced in the last week of February 1997, as a consequence of the actions committed by paramilitary groups and members of the armed forces, during operation "Genesis", carried out by the XVII Brigade stationed in Carepa [...]

The return process to their communities was rescheduled in three phases, the third of which was to be completed in December 2000; however, it was suspended due to threats from paramilitary groups.

Finally, during March 1 of the current year, the last phase of the return was successfully completed. During the time of the displacement, they have been the victims of threats, murders, disappearances, and being pointed out by the paramilitary groups and in irregular activities of the Military Forces.

To date, 80 members of its community have been murdered and/or disappeared, and since 1998, they have requested the intervention by the competent authorities to clarify and punish the perpetrators of the senseless deforestation on their lands, which has generated new instances of being pointed out and threats.<sup>162</sup>

170. According to information received by the Ombudsman of Colombia, between 1996 and 2002, 106 persons belonging to peace communities and to the Cacarica Return Process were murdered and 19 persons were disappeared.<sup>163</sup>

171. On March 11, 2003, a raid of approximately 300 armed men took place in the humanitarian area called "Nueva Vida".<sup>164</sup>

174. In June 2003, the Commission conducted an *in loco* visit to the CAVIDA collective lands on the banks of the Cacarica river and received statements and information from the beneficiaries of the precautionary measures living and working in "Nueva Vida" regarding the

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...continuation

constructed for San Higinio, Bocas del Limón, La Tapa, Puente América, Santa Lucia, Barranquilla. Note of the Foreign Ministry, August 27, 2009, para. 111.

<sup>161</sup> The State requested that the military authorities protect the population and an inter-sectoral commission travelled to the area from June 9 to 11, 2001, and supplied information to the Security Forces about the presence of armed groups in the area. This commission met with the population in order to listen to them and inform them of the protective mechanisms they could count on, such as a satellite telephone in the office of the delegate of the Ombudsman's Office. The State reported that the armed groups did not exercise violence against the population, that they had already withdrawn and that the individuals who went to Quebrada El Medio had returned to the settlements on June 9, 2001. Annex 59. IACHR's note to the Foreign Ministry of June 8, 2001, of the proceedings in MC 70-99.

<sup>162</sup> Cited in: Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 24. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>163</sup> Cf. Annex 2. Ombudsman's Office. Ombudsman's Resolution No. 025 - On the Massive Human Rights Violations and Forced Displacement in the Bajo Atrato Region of Chocó, October 2002. In: Annex to the initial petition of June 1, 2004.

<sup>164</sup> Annex 37. CAVIDA. *We were always dreaming: Recollections of boys and girls lives who returned to Cacarica*, July 2001. Códice LTDA Publishers. p.29, Annex to petitioners' brief of March 23, 2009.

killings, acts of torture, violence and intimidation committed against community members by paramilitary groups operating in the area, despite the presence of the XVII Army Brigade.<sup>165</sup> In its Press Release, the IACHR stressed that

The IACHR Rapporteur was concerned to note the persistent complaints about acts of aggression by paramilitary groups, allegedly committed with the acquiescence or connivance of the Security Forces operating in the area. In addition, he received information about the phenomenon of deforestation of the collective lands and on acts of harassment designed to force some of these communities to plant African palm as a classic prelude to the introduction of illegal crops.<sup>166</sup>

172. On June 4, 2004, the IACHR reiterated to the State "its concern at the repeated incidents of harassment against the community beneficiary of precautionary measures, involving the participation of members of the National Army's XVII Brigade"<sup>167</sup> after the alleged extrajudicial execution of beneficiary Víctor Cuesta Mosquera by a member of the Army.

## **8. Regarding to the Exploitation of Collective Lands**

173. By way of history and background with respect to the situation of the ancestral lands of the Cacarica Afro-descendant communities,<sup>168</sup> it is relevant to note that since 1967, Law 31 accorded the right to collective ownership of ancestrally inhabited land to the national black communities, *qua* tribal peoples, and therefore, the ability to use and exploit the soil and forests - this last right, pursuant to law, or with prior authorization of the local authority, in terms of the Code of Natural Resources.<sup>169</sup> In addition, the Colombian Constitution of 1991 recognizes ethnic and cultural diversity and clearly defines the right to collective ownership by the black communities, protects their cultural identity, protects their traditional methods of production and encourages their economic and cultural development.<sup>170</sup>

174. In 1992, the Government created the Special Commission for Black Communities in accordance with provisional Article 55 of the Constitution, which expressed concern for the logging in the area of the River Cacarica by reason of (i) the blockaging of the river by the processes for

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<sup>165</sup> Annex 60. IACHR Press Release No. 15/03 "IACHR Rapporteur concludes working visit to the Republic of Colombia, June 27, 2003", in: <http://www.IACHR.org/Comunicados/Spanish/2003/15.03.htm>.

<sup>166</sup> IACHR Press Release No. 15/03 "IACHR Rapporteur concludes working visit to the Republic of Colombia, June 27, 2003", in: <http://www.IACHR.org/Comunicados/Spanish/2003/15.03.htm>.

<sup>167</sup> IACHR's note to the State of June 8, 2001, in the proceedings for precautionary measures MC 70-99.

<sup>168</sup> Law 31 of 1967 approved the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries of the ILO of 1957; it permitted to intensify in the State policies of recognizing territorial lands of the communities and was a legal basis for the 1986 request by the black peasants of the Atrato on the granting of community title and its opposition to logging on their lands. Constitutional Court. Judgment T-995/2003 of October 17, 2003, pp. 19 and 10. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008. The Pacific Communities also demanded from the Government the title to "the community forests in the villages of Medio Atrato", and the title proceedings of the black population in the area in an associated or private form in accordance with each family's wishes. Meeting for the Defense of our Pacific Territories, Quibdó, June 1990. Constitutional Court. Judgment T-995/2003 of October 17, 2003. Footnotes to pp. 28 and 29. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008. The Cimarrón National Movement, for its part, filed a petition with the National Constituent Assembly for the acknowledgement of "their ancestral rights of property and use which the black and indigenous communities have acquired over the lands they occupy." Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 12. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>169</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 82. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>170</sup> Constitution of Colombia, Articles 1 and 7. Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 13. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

transporting timber and (ii) the deforestation of the last catival hardwood reservations which the country could boast of; and revealed the complaints of the social organizations for the procedures of the Autonomous Regional Corporation for Sustainable Development in Chocó (hereinafter "CODECHOCO") in the granting of permits for logging to companies, to the prejudice of the communities, in breach of provisional Article 55.<sup>171</sup> The commissioners insisted on the necessity of suspending the concession of large-scale logging permissions while the collective ownership title of Afro-descendant territory and the adoption of policies to protect the environment were still pending.<sup>172</sup>

175. On April 13, 1993, the Superior Court of the Quibdó Judicial District protected the fundamental right to work of the operators of Maderas del Darién S.A. and ordered CODECHOCO to complete as contractually agreed the timber concessions granted in Decisions 3595 and 3596 of December 1992 in the name of the said timber company and one other; a decision that was reversed in May 1993 by the Supreme Court of Justice. The Constitutional Court upheld the Supreme Court's decision in Judgment T-469 of 1993. In July and August 1994, the Ombudsman requested the Chocó Judicial District Court to annul resolutions 3595 and 3596 and that CODECHOCO should adopt measures to fulfill the said judgments. The Court condemned the Director of CODECHOCO for contempt of court, but the Labor Cassation Chamber of the Supreme Court of Justice annulled the condemnation considering that it was imposed by a non-existent judicial order.<sup>173</sup>

176. On August 27, 1993, Law 70 implemented transitory Article 55 of the Constitution acknowledging the right of the black communities to participate in: (i) the decisions affecting them and (ii) participative proceedings, as seen by the rest of Colombian nationals, on an equal footing.<sup>174</sup>

177. On September 23, 1997, due to the communities' displacement from Cacarica, Maderas del Darién S.A. requested from CODECHOCO the suspension of forest exploitation activities for as long as would be necessary based on public order problems preventing furtherance of their work in the area. CODECHOCO complied via resolution 1479 of 1997.

178. On April 26, 1999, INCORA granted collective title to the lands in the jurisdiction of the Riosucio Municipality in Chocó Department to the black communities of the Community Council of the Cacarica river basin, as "lands of black communities".<sup>175</sup>

179. On May 10, 2000, Maderas del Darién S.A. informed CODECHOCO of the decision to begin activities with the participation of the communities settled in the area.<sup>176</sup>

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<sup>171</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 26. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>172</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 26. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>173</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 23. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>174</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 15. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>175</sup> Annex 1. Constitutional Court. Judgment T-955/2003 of October 17, 2003, p. 5. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>176</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 32. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

180. In June 2000, the Ombudsman's Office of the Department of Justice of the River Cacarica Basin, the Director of the Nature Reserve of los Kativos and the Human Rights Advisors of the Procurator General, denounced the logging in the territory of the communities that were in the process of returning, within the process of follow-up and control of the agreements signed between the National Government and the communities returning to the region. They denounced the high-tech lumbering of cativo wood directly affecting the means of survival of the communities in the process of returning and their natural resources, the blocking of the pipes, the injecting of the wood with substances that poisoned the water and contaminated the fish, and the transformation of the cativo woods into grazing land and their consequent extinction.<sup>177</sup>

181. On April 23 and 26, and October 24, 2001, the Community Council of the Cacarica Basin denounced the logging on its collective territory by Empresas del Darién S.A. in a public communication and before State entities.<sup>178</sup> They demanded vindication of their fundamental rights to ethnic, social, socio-economic and cultural integrity, to subsistence, and not to be subjected to forced displacement, to participation in, and the right to, due process that they submitted were being violated by the Ministry of the Environment, Living and Territorial Development, CODECHOCO and Madereras del Darién, because the former tolerate and allow, and the private entity advances, the illegal logging on their collective territories.<sup>179</sup>

182. On September 7, 2001, the Administrative Court of Cundinamarca issued a *tutela* decision protecting the fundamental rights of the River Cacarica Communities to health in conjunction with the right to life, to tranquility and, *inter alia*, ordered that the Autonomous Corporation of Chocó comply with the logging suspension order in that area.<sup>180</sup> This decision was upheld on November 16, 2001, by the *Conseil d'Etat*, which pointed out that the presence of Military Forces in the area should respond to a plan "allowing fulfillment of the purpose of lending security to the area and preserving the life and stability of the community faced with violence instigated by illegal armed groups."<sup>181</sup>

183. On October 17, 2003, when reviewing the *tutela* decision adopted by the Contentious Administrative Court of Chocó, the Constitutional Court of Colombia vindicated the fundamental rights to diversity and ethnic and cultural integrity, to collective ownership, to participation and to subsistence of the Afro-Colombian communities of the Cacarica river basin threatened by indiscriminate logging in the plaintiffs' collective territory. It ordered, *inter alia*, the suspension of the logging until a consultation process had taken place and the logging on their collective territory had been duly regulated.<sup>182</sup> In the abovementioned judgment the Court pointed out that:

The 23 communities participating in the Superior Council of the river Cacarica basin, created in accordance with the provisions of Article 5 of Law 70 of 1993, undergo serious difficulties

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<sup>177</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 46. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>178</sup> Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 9. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>179</sup> Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 51. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>180</sup> Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 9. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>181</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 24. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>182</sup> Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, pp. 92 and 93. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008

both from within and without, which obstruct their community processes and affect the consolidation of their cultural identity, and relate to disagreements on the administration of the collective territory - fundamental characteristics which the commercial exploitation of logs on their land must fulfill, and in the consequences generated by the displacement and the harassment of all kinds to which they were and continue to be the victims.<sup>183</sup>

184. In its 2006 Report, the United Nations High Commissioner for Human Rights repeated that "the territories inhabited by Afro-Colombian communities have been seriously affected due to the fact that they are particularly rich in natural resources and due to their strategic location for illegal armed groups. Various communities in Chocó have been seriously affected by private exploitation of their collective lands."<sup>184</sup>

## **9. Judicial Proceedings Designed to Clarify the Events**

### **a. In the Ordinary Criminal Courts**

185. There are two investigations on the facts of the case, pending before the UDH-FGN: investigation No. 5767 (now 426)<sup>185</sup> for the crime of conspiracy to commit crimes and investigation No. 2332<sup>186</sup> for the crime of homicide of a protected person - Marino López Mena - forced displacement and conspiracy to commit crimes.

#### **i) Criminal Investigation No. 5767 (now 426) against General (Ret.) Rito Alejo Del Río Rojas**

186. On January 19, 1999, the Prosecutor General's Office initiated a preliminary investigation against General Del Río Rojas, under case file No. 5767 (426) for complaints over his alleged acquiescence with paramilitary groups, between 1996 and 1997 while commanding the XVII Brigade. In addition, former soldier Oswaldo de Jesús Giraldo Yepes was investigated under the same proceedings.<sup>187</sup> On July 21, 2001, the Bogota UDH Specialized Prosecutor Lucía

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<sup>183</sup> Annex 1. Constitutional Court, Judgment T-955/2003 of October 17, 2003, p. 65. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>184</sup> Annex 61. Annual Report on the Human Rights Situation in Colombia, Office in Colombia of the UNHCHR E/CN.4/2006/9, January 20, 2006, Note 12, Annex IV, para. 14. See. [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2005\\_esp.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2005_esp.pdf). Cf. Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. See. <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>

<sup>185</sup> This investigation was previously identified under numbers 1440 and 5767. Note of the Foreign Ministry, August 27, 2009, para. 170.

<sup>186</sup> This investigation was identified in the past with case number 147301, of the 100th Prosecutor of Quibdó. Note of the Foreign Ministry, August 27, 2009, para. 170.

<sup>187</sup> On March 10, 1999, former soldier Oswaldo Giraldo Yepes, a member of one of the battalions in Urabá commanded by General Del Río Rojas between 1996 and 1997 who was detained in the La Ceja prison (Antioquia), declared: "we arrived at Brigade 17, towards the end of 94, General Rito Alejo del Río received us, he commented and told us that we had here in Urabá the best battalion in the Army, because of this he had asked for us to go there. Around 300 of us men arrived and it was the Battalion called the Cacique Coyará Counter-Guerilla Battalion. He told us that we had to work with the paramilitaries. They established a command position in Mutatá, from where my General Rito Alejo del Río coordinated operations with Major Chinome Soto, I don't know his name, then there we also started to "legalize" civilians [...]" Annex 63. Statement of Oswaldo Giraldo Yepes, before the Regional Prosecutor of the city of Manizales on March 10, 1999. Annex 2 to the initial petition of June 1, 2004.

Those men belong to Carlos Castaño. Castaño has like two thousand paramilitaries and now the two commands are linked, paramilitaries and the Army, they are not at war, they are working together, collaborating, for example, the paras get along well with the Army, during the time I was in the area, like two years, more than I was in Tierra Alta, in all I was like three and a half years, I realized that the action of the Army is worse than that of the paramilitaries. The paras work fifty-

Continues...

Margarita Luna Prada, in cooperation with the Head of the UDH-FGN, Pedro Elías Díaz Romero and in consultation with the Prosecutor General in charge, Pablo Elías González Mongui, opened a formal investigation against the General for crimes of conspiracy to commit crimes, embezzlement of military property, and corrupt practices by omission, and ordered a search of his home and his arrest.

187. In his statement, soldier Giraldo Yepes declared

the paramilitary worked fifty-fifty with the Army, the tough paramilitary commanders held meetings at the Brigade with my GENERAL RITO ALEJO DEL RIO. I saw him, I was one month escorting my General RITO ALEJO DEL RIO because he was living in fear...he went with the Paramilitaries. My General used the Army's keys and gave us orders, for example at one point we had to do "this" with the cousins because the cousins knew what to do so that you go with them and he was referring to massacres and legalizations.<sup>188</sup>

188. On July 23, 2001, a UDH Specialized Prosecutor and three members of the Technical Investigation Body (CTI), coordinated by the Head of the UDH Maritza González Manrique, carried out the arrest warrant and search.<sup>189</sup>

189. On July 27, 2001, General (Ret.) Del Río Rojas' defense requested that the Prosecutor refrain from filing charges, arguing that the Prosecutor lacked the required functional competence to charge a suspect who was fulfilling the role of General of the Republic at the time that the events occurred. On July 31, 2001, the Prosecutor made a decision on Del Río Rojas' judicial situation by imposing preventive detention without bond, for the crimes of aggravated conspiracy due to the proven connection between the XVII Brigade and the ACCUs acting within its jurisdiction.<sup>190</sup>

190. This decision was brought to the attention of the incoming Prosecutor General, Luis Camilo Osorio Isaza, who considered it "disloyal" and demanded the UDH-FGN Head's resignation. The former Prosecutor General in charge decided to submit his own resignation, in support.<sup>191</sup>

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fifty with the Army. The tough, though commanders of the paramilitaries meet in the Brigade with my General Rito Alejo del Río. I've seen them, I was one month guarding my General Rito Alejo del Río, because he was living scared that suddenly the guerrillas would place an infiltrator there and would kill him ....My General used the Army's keys and gave us orders, for example at this point you have to do "this" with the cousins, the cousins know what to do for you to go with them, and referred to Massacres and "legalizations".

These meetings were constant, what happened was that the paras had free entry there into the Brigade, they only said that they were going to talk to Rito Alejo and they went in. The meetings were to plan Massacres, for disappearances and "legalization" of the people and afterwards orders came from the meetings about what we had to do." Annex 63. Statement of Oswaldo Giraldo Yepes, before the Regional Prosecutor, Special Terrorist Unit. Manizales on March 10, 1999. Annex to the initial petition of June 1, 2004.

<sup>188</sup> Annex 64. Prosecutor decides legal situation of Brigadier General (ret.) Rito Alejo del Río Rojas proceedings 5767, p. 14. Annex 7 to the Note of the Colombian Foreign Ministry No. DDH GOI 18083/0836, received on May 1, 2006. Cf. Annex 39. Voluntary video deposition of Fredy Rendón who defines that the "cousins" was the identification of the self-defense forces by the military units. Annex 3 D to the Note of the Foreign Ministry, August 27, 2009.

<sup>189</sup> Annex 65. IACHR Communication to the State of Colombia of December 17, 1999 in the precautionary measures proceedings.

<sup>190</sup> Annex 42. Prosecutor General's Office. Decision of September 12, 2008 in which the legal situation of Rito Alejo Del Río was resolved. Annex to the petitioners' brief of May 19, 2009.

<sup>191</sup> "As the information available shows, the lack of support for the decision of the National Human Rights Unit of the General Prosecutor's Office to perfect the arrest of General del Río Rojas, lead to the forced resignation of its Director, Dr. Pedro Díaz Romero and the release of the General. The Commission was also aware that judicial and disciplinary actions were ordered against the prosecutors of the Unit and members of the Technical Investigatory Body (CTI) who participated in the investigation and relevant arrest." Annex 66. IACHR Press Release No. 21/01 IACHR's Concern at Changes in the

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191. On August 3, 2001, the General's defense lodged a *habeas corpus* petition, which was decided in his favor on August 4, 2001, and his release was ordered based on the Prosecutor's lack of authority to order his arrest. Also, criminal and disciplinary investigations were initiated against the Prosecutor and the officials participating in the General's arrest and search of his home.<sup>192</sup>

192. On August 8, 2001, the IACHR granted precautionary measures in favor of the former Head of the UDH-FGN and the Chief of the Anti-Corruption Unit - whose resignation had also been requested - as well as of various prosecutors assigned to the UDH-FGN and members of the CTI.<sup>193</sup> The IACHR requested that the State adopt the necessary measures to protect their and their family's physical integrity and to prevent any reprisals against members of the UDH in response to the legitimate exercise of their functions.<sup>194</sup>

193. On July 16, 2002, the petitioners filed an *actio popularis* on behalf of all humanity, within process No. 5767, which was rejected by the Prosecutor General on August 13, 2002.<sup>195</sup> A request for review of the decision was lodged before the same Prosecutor, who upheld the initial decision.<sup>196</sup>

194. On September 25, 2002, Father Javier Giraldo, the legal representative of the petitioners, lodged a *tutela* action before the Criminal Cassation Chamber of the Supreme Court of Justice, in his own name, as a directly injured party.<sup>197</sup> The *tutela* was rejected on October 8, 2002, on the basis that "a constitutional judge may not examine steps in a judicial proceeding or court orders through a *tutela* remedy."<sup>198</sup> This judgment was selected by the Constitutional Court for revision, and the Court decided to reverse the decisions issued by the Prosecutor General and

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National Human Rights Unit in Colombia. At: <http://www.cidh.org/Comunicados/English/2001/Press21-01.htm>. In May 2008, the Administrative Tribunal of Cundinamarca decided that the resolution of resignation of Pedro Díaz was invalid, Resolution No. 2-1876 of August 9, 2001, and ordered the Prosecutor General to reinstate the person concerned in charge and provide appropriate reparations. Annex 67. See Administrative Tribunal of Cundinamarca, decision of May 8, 2008. In: <http://190.24.134.90/tribunal/Scripts/Data/resultados.php?pag=3>.

<sup>192</sup> Habeas corpus decision of the 31st Criminal Judge of the Bogota Circuit, August 4, 2001, filed as No. 00004/2001. Petitioners' allegations on the merits received on March 10, 2008, para.162.

<sup>193</sup> Lucía Margarita Luna Prada, Gonzalo Alirio García Gómez, Maritza González Manrique, Fernando Niño Quintero, Ramiro Sánchez Pardo and Jaime Tapia Carlier. Annex 68. MC 185-01. Pedro Díaz Romero et al. See IACHR, Report No. 86/06. Petition 499-04, Admissibility, Marino López et al. (Operation Genesis), Colombia, October 21, 2006, footnotes 31 and 32. See also: Annex 69. IACHR. Annual Report 2001 III C. 1, para. 20. See. <http://www.cidh.org/annualrep/2001sp/cap.3a.htm#1.%20%20%20%20%20%20%20Medidas%20cautelares%20acordadas%20o%20extendidas%20por%20la%20Comisión%20durante>.

<sup>194</sup> Annex 68. MC 185-01. Pedro Díaz Romero et al. IACHR. See Annex 66. IACHR Press Release No. 21/01. *IACHR's Concern at changes in the National Human Rights Unit in Colombia*. See <http://www.cidh.org/Comunicados/English/2001/Press21-01.htm>.

<sup>195</sup> The Prosecutor General considered: "there are no grounds to bring a suit, since the plaintiff is not a victim of the events punishable in the complaint and which are set forth in the *partie civile* action...". Annex 70. Constitutional Court, Judgment T-249, of March 21, 2003, p.4. Annex to the original petition of June 1, 2004.

<sup>196</sup> Decision of October 4, 2002. Petitioners' allegations on the merits received on March 10, 2008, para.171. See also: Annex 70. Constitutional Court, Judgment T-249 of March 21, 2003, p. 4. Annex to the original petition of June 1, 2004.

<sup>197</sup> Annex 70. Constitutional Court. Judgment T-249 of March 21, 2003, p. 7. Annex to the original petition of June 1, 2004.

<sup>198</sup> Annex 70. Constitutional Court. Judgment T-249 of March 21, 2003, p. 8. Annex to the original petition of June 1, 2004.

the Supreme Court and ordered the Prosecutor General to proceed to the admission of the *partie civile* claim.<sup>199</sup>

195. On May 29, 2003, when reviewing the situation of General (Ret.) del Río Rojas, the Prosecutor General decided not to impose bail on him.<sup>200</sup>

196. Subsequently Oswaldo Giraldo Yepes made a statement, retracting what he had said earlier and explained

On this occasion I would like to let the Colombian judiciary know about the dilemma I find myself in. A few days ago I placed my problem in the hands of the Colombian courts and I have not been given the necessary support since they have removed all protection from myself and my family. I hope, gentlemen in charge of justice, that you realize that I am being threatened so that I retract my aforementioned deposition, and because of fear I feel compelled to retract; due to the pressure I'm suffering was that I said that I didn't want to know anything about justice, as I realize that the paramilitaries have seized the Yarumal village in complicity with justice; I fear for my family because Colombian justice and institutions do not provide the help I need as a Colombian who wishes to denounce the corrupt.<sup>201</sup>

197. On March 9, 2004, the investigation against General Del Río Rojas was closed "for not having - in accordance with the evidence - any criminal responsibility for acts or omissions."<sup>202</sup>

198. On February 18, 2009, the Procurator General of the Nation lodged a request for revision of the said decision,<sup>203</sup> which was judged to be appropriate on March 11, 2009, by the Criminal Cassation Chamber of the Supreme Court of Justice, which lifted the *res judicata* and ordered the reopening of criminal investigation No. 426, in the light of the discovery of new

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<sup>199</sup> Annex 70. Constitutional Court. Judgment T-249 of March 21, 2003, p. 29. Annex to the original petition of June 1, 2004,

<sup>200</sup> Annex 64. Prosecutor sets legal situation of Brigadier General (ret.) Rito Alejo del Río Rojas proceedings 5767, p. 14. Annex 7 to the Note of the Colombian Foreign Ministry No. DDH GOI 18083/0836, received on May 1, 2006.

<sup>201</sup> Annex 71. Communication of Oswaldo Giraldo Yépez to the UDH on October 7, 2002, revealing the reason for his retraction and hand written communications of Oswaldo Giraldo Yépez to the Yarumal Prison Warden, Antioquia on February 12, 2002 in which he informs that he fears for his safety in the penitentiary center and that his life and that of his family are in danger; the Yarumal sectional Prosecutor on February 18, 2002, requesting that he be called for interrogation to be made aware of the name and location of the perpetrator of the murder of the brother of a councilor, to Dr Luna Prada on March 1, 2002, requesting that a statement be taken from him since he wants an end to the corruption and violence in his country and requesting security measures for his family, to Dr. Luna Prada on March 22, 2002, begging for justice, adding a threat sent to his wife and repeating the request for protection of his family; to Dr. Luna Prada on March 25, 2002, requesting the Yarumal Prosecutor take his statement, since in the penitentiary center he is taken for a "human rights toadie" for all that he has told up until then; to Dr. Luna Prada on April 4, 2002, professing his innocence and the reasons for his statements and that a statement be taken from him as soon as possible; to the special Human Rights Public Prosecutor in Bogota on April 11, 2002, professing his innocence and requesting that the relevant investigations be undertaken and the interrogation be widened, to the special Human Rights Public Prosecutor in Bogota and to Dr. Luna Prada on April 20, 2002, imploring that the relevant investigations be made to demonstrate his innocence and that he be called to make a statement; to the special Human Rights Public Prosecutor in Bogota on June 11, 2002, requesting his release since no evidence had been found against him justifying his continued imprisonment; to the UDH on July 19, 2002, requesting a modification of his legal situation; to the UDH in September 2002, requesting the he be authorized to be interviewed by a journalist of the "El Diario" newspaper; to the UDH and to Dr. Luna Prada on October 1, 2002, showing the retraction of his complaints. Annex 2 to the initial petition of June 1, 2004.

<sup>202</sup> Annex 72. Decision to close the investigation against Brigadier General (ret.) Rito Alejo del Río Rojas on March 9, 2004. Annex 7 to the Note of the Colombian Foreign Ministry No. DDH GOI 18083/0836, received on May 1, 2006.

<sup>203</sup> Note of the Foreign Ministry, August 27, 2009, para. 176.

evidence,<sup>204</sup> unavailable at the time of deciding on the closing of the investigation.<sup>205</sup> The investigation is currently at the instruction stage with the 20th Prosecutor of the UDH-FGN.<sup>206</sup>

**ii) Criminal Investigation No. 2332 against General (Ret.) Rito Alejo del Río Rojas and some other members of the "Elmer Cárdenas" paramilitary group**

199. On February 27, 1997, an investigation under No. 2332 was initiated against some members of the "Elmer Cárdenas" paramilitary group and General (Ret.) Del Río Rojas, for their raid on the Bijao hamlet, the "murder of a protected person" - Marino López Mena - the forced displacement of February 1997 and for conspiracy to commit crimes.<sup>207</sup> Luis Muentes Mendoza and

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<sup>204</sup> Voluntary depositions of Héber Veloza García, Salvatore Mancuso Gómez and Jorge Iván Laverde Zapata, made in the context of the Justice and Peace Law, and the evidence of Elkin Casarrubia Posada. Annex 73. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on revision action (Proceedings 30510) March 11, 2009, para. 5.3. Annex 4 to the Note of the Foreign Ministry, August 27, 2009.

<sup>205</sup> Annex 73. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on revision action (Proceedings 30510) March 11, 2009, para. 5.3. Note of the Foreign Ministry, August 27, 2009, para. 177.

<sup>206</sup> Note of the Foreign Ministry, August 27, 2009, para. 180.

<sup>207</sup> The State indicates that the following procedural steps were taken (day/month/year): 04/07/2003: the investigation was assigned to a special prosecutor of Quibdó. 30/07/2003: Decision that ordered the initiation of the preliminary investigation by the 15th Public Prosecutor's Section of Riosucio and ordered the taking of evidence; 08/08/2003: Mr. Adán Quinto Mosquera's statement was received, representative of the Cacarica communities, who stated he knew the victim. It was established who murdered him, Marino López, as members of the AUC because they saw him dressed in camouflage used by the guerrilla members of the FARC. 9/09/2004: statement of Luis Aníbal Lemus Mosquera, who related that they told him that Marino López had been murdered by the paramilitaries because a boss had said he was a guerilla fighter. He also stated that at that date there had been no bombings in the place of the events. 13/09/2004: the Prosecutor sends the investigation to the competence of the Judges of the Special Circuit of Quibdó, on mentioning that the alleged conduct was committed by paramilitaries. 12/10/2004: jurisdiction advocated for the 100th Special Prosecutor of Quibdó, who ordered the Riosucio prosecutor to gather certain evidence. 13/10/2005: in an order directed to the CTI director, by the Prosecutor, he reported that the investigation was related to a list of investigations, which the UNDDHD would give more impetus. 25/10/2005: the 100th Prosecutor ordered the taking of various statements, including that of Marino López Mena's partner. 11/11/2005: it was thought that the investigation should be brought to the attention of the Special Commission of the UNDDHH and DIH in the Urabá area of Antioquia, and the taking of evidence was ordered. 17/11/2005: statement of Adán Quinto was given establishing that Marino López was murdered by paramilitaries and that an NGO had disinterred him to be paid money given by the Solidarity Network, but it was not known where they buried him. 02/02/2006: in a resolution, the FGN gave jurisdiction to the investigation to the 21st Prosecutor's Office of the UNDDHH and DIH of Bogota. The interrogation of Fredy Rendón Herrera was moved, and various judicial inspections were carried out, a request was made for a copy of the disciplinary investigation into the so-called Operation Genesis, and the testimony of various individuals was taken. 10/02/2007: Emedelia Palacios Palacios, Libia Luz Palacios Palacios and Leonardo López García made statements. 09/04/2007: the investigation was reassigned to the 14th Chamber of the UNDDHH and DIH. In this phase, the investigatory activity was aimed at obtaining the identity of Vicente Muentes, aka Richard and aka Taolamba, paramilitaries and alleged co-perpetrators of the criminal offense of murder. 15/05/2007: Voluntary deposition step of Salvatore Mancuso, in which he alluded to the alleged relationship that General del Río Rojas maintained with the AUC. 31/07/2008: date of opening of the instruction stage. The following was ordered: interrogation of Luis Muentes Mendoza, Fredy Rendón Herrera, Diego Luis Hinestroza Moreno, Marino Mosquera Fernández, who participated in the murder of Marino López Mena, as related by them in voluntary depositions before the 19th delegated prosecutor to the Justice and Peace Courts of Medellín. This step took place on August 28, and 29, 2008. Judicial inspection step on all the voluntary depositions rendered by those previously mentioned. Undertaking the judicial inspection is fixed for August 26, 2008. Determination whether Marino Mosquera Fernández was deceased at that date. In the meanwhile, arrest warrant issued against him to be heard without a sworn affidavit. Investigator is charged to conduct an inquest aimed at establishing the participation of members of the Army in the events. 22/08/2008: PGN chamber provided with a copy of the step of voluntary deposition of Salvatore Mancuso on May 15, 2007. The foregoing with the purpose of studying the possibility of starting a revision appeal against the Preclusion decision of December 9, 2004. 03/09/2008: General Del Río Rojas was joint in proceedings with case file number 2332 of the UDH-FGN for the crime of murder of a protected person, the victims being Marino López Mena. In addition, the judicial situation of Luis Muentes Mendoza and Diego Luis Hinestroza Moreno is resolved and they were subject to bail conditions of preventive detention. 05/09/2008 – 08/09/2008: step of interrogation of General Del Río Rojas undertaken. 12/09/2008: decision to impose bail conditions of preventive detention against General Del Río Rojas, as a possible material co-perpetrator to the crime of murder of a protected person. 25/09/2008: taking of evidence ordered. 29/09/2008: partie civile claim admitted, presented by the lawyer Liliana Andrea Ávila García, representing Emedelia Palacios Palacios. 27/10/2008: taking of evidence ordered. 14/11/2008: order for partial closure of the investigation underway against Mr. Del Río Rojas for the crime of murder of a protected person. 02/12/2008: legal

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Diego Luis Hinestroza Moreno also appeared as defendants. A number of procedural steps were taken with regard to the General,<sup>208</sup> and the proceedings are currently pending before the Second Specialized Criminal Judge of the Bogotá Circuit. With regard to the other two accused, certain procedural steps were taken.<sup>209</sup> In addition, William Manuel Soto, Fredy Rendón Herrera and Marino Mosquera Fernández are also under investigation for their alleged responsibility in the commission of these offenses.

200. On May 8, 1998, Coronel (Ret.) Carlos Alfonso Velásquez Romero Segundo, Commander and Chief of Staff of the XVII Brigade stationed in Carepa (Antioquia) made a statement indicating

With regard to members of the Army there were signals from officers and non-commissioned officers that could work with them [the Self-Defense Forces] in certain teams to say some names and also other members of the Army who did not appreciate the dangers of this violent factor and did not proceed against the Self-Defense Forces more due to omission that action.

In the six months I worked under his [General Rito Alejo Del Río Rojas] command, I never heard either verbally or in writing of a willingness to act against the Self-Defense Forces. I remember once recently he came back from a trip he made to Bogotá to attend a social event celebrating the promotion of a Brigadier General, where he was told something like 'Mister del Río, you have over there in Urabá a strategic ally, the paramilitaries, that you need to know how to use.

During the second half of 1995, when General del Río had not yet arrived in the Brigade, 16 or 18 members of illegal organizations were detained in various operations, and placed at the disposition of the Prosecutor's Office in Medellín, but from the beginning of the second half of December 1995, and during the first half of 1996, when I was working there, there was not one single capture or killing of members of these groups or, pardon, perhaps there was one deceased in an incident with troops and a vehicle but it wasn't a planned operation. I have no reason to believe that there was a operation against any group of the self-defense forces ordered from the brigade.<sup>210</sup>

201. In these proceedings, the *partie civile* claim filed by the legal representative of Emedelia Palacios Palacios was admitted.<sup>211</sup>

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representative of the *partie civile* lodged motion for review against the resolution of November 14, 2008, which ordered the closure of the investigation and proceed with the substance of the investigation. 24/12/2008: *partie civile* filed allegations on outlined charges. 26/12/2008: substance of the investigation against General Del Río Rojas with indictment decision. 24/02/2009: appeal suit lodged by the defense resolved, which confirmed the correctness of the indictment resolution. Note of the Foreign Ministry, August 27, 2009, para. 183.

<sup>208</sup> On February 24, 2009, the Unit of Delegated Prosecutors before the Superior Court of Bogota resolved the appeal lodged by the defense against the indictment resolution, confirming it; on March 24, 2009, the Criminal Cassation Chamber of the Supreme Court ordered the transfer to the Judicial District of Bogota. Note of the Foreign Ministry, August 27, 2009, para. 184.

<sup>209</sup> On August 29, 2008, Luis Muentes Mendoza was formally linked to the investigation and on September 3, 2009, his judicial situation was resolved and bail conditions of preventive detention imposed on him, for the offenses of murder of a protected person -Marino López Mena-, forced displacement and conspiracy to commit crimes. On August 29, 2008, Diego Luis Hinestroza Moreno was formally linked to the investigation and on September 3, 2009, his judicial situation was resolved and bail conditions of preventive detention imposed on him, for the offenses of murder of a protected person -Marino López Mena-, forced displacement and conspiracy to commit crimes. Note of the Foreign Ministry, August 27, 2009, para. 184.

<sup>210</sup> Annex 74 Statement made by Colonel (ret.) Carlos Alfonso Velásquez Romero (Chief of Staff between July1, 1995 and June 30, 1996) before the UDH on May 8, 1998. Annexes to the initial petition received on June 1, 2004.

<sup>211</sup> Note of the Foreign Ministry, August 27, 2009, para. 208.

**b. In the Justice and Peace Proceedings**

202. In the context of Law 975 of 2005 -- or Justice and Peace Law -- seven demobilized individuals of the self-defense forces declared that they had participated in the events of the present case.<sup>212</sup> Five of them are currently indicted and bailed.<sup>213</sup> The events referred to in the voluntary depositions, are currently subject to a verification of truth.<sup>214</sup>

203. On July 28, 1999, Moisés Machado Córdoba, a civilian who used to work in office S-3 in the UDH-FGN, rendered a statement, which indicated that

In the area there was a paramilitary base located behind the Army Brigade, which they afterwards converted into a Convivir, which is still operating there, this more than anything else cemented my doubts regarding the close friendship between the Army and the Self-Defense Forces.<sup>215</sup>

**c. Investigation in the Disciplinary Jurisdiction**

204. On June 27, 2002, the Procurator General of the Nation began a disciplinary investigation under No. 155-73307-2002, against General (Ret.) Del Río Rojas and Army officers Jaime Arturo Remolina, Rafael Alfredo Arrázola, Guillermo Antonio Chinome and Luis Elkin Rentería based on the complaints of Army member Oswaldo De Jesús Giraldo Yepes regarding the connection of the XVII Brigade with paramilitaries in the Urabá region. This investigation was archived and General Del Río Rojas exonerated. The Procurator General declared it *res judicata* on establishing that there had been resolutions in another investigation.<sup>216</sup>

205. Former soldier Giraldo Yepes withdrew from the disciplinary investigation and declared that

I don't want to make this deposition, and I withdraw everything I have complained about because the Colombian courts have not acted as they should against corruption; they only have me in a cell, no one else, due to my collaboration with the courts, since I have always had the desire and wish to complain about abuse and the atrocities seen in Colombia on the part of the Army, Police, SIJIN and public employees.<sup>217</sup>

206. By August 2003, the following disciplinary investigations had been initiated with respect to the facts of the case,<sup>218</sup> of which the Commission does not have further information:

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<sup>212</sup> Annexes 39, 40, 35, 45, 75, 49 y 48 Voluntary video depositions of Fredy Rendón Herrera, Diego Luis Hinestroza Moreno, Luis Muentes Mendoza, William Manuel Soto Salcedo, Franklin Hernando Segura, Rubén Darío Rendón Blanquicet and Alberto García Sevilla in the Justice and Peace Proceedings. Annexes to the Note of the Foreign Ministry, August 27, 2009.

<sup>213</sup> Note of the Foreign Ministry, August 27, 2009.

<sup>214</sup> Note of the Foreign Ministry, August 27, 2009.

<sup>215</sup> Annex 76. Statement of Moisés Machado Córdoba before the Special Commission of the UDH and DIH of July 28, 1999. Annex 2 to the initial petition of June 1, 2004.

<sup>216</sup> Annex 77. Procurator General, Resolution issued on December 5, 2002. Annex to the petitioners' brief received on May 19, 2009.

<sup>217</sup> Statement rendered in the Bellavista Penitentiary in Medellín on July 28, 2002, before the PGN. CINEP data base of Political Violence, *Crime against Humanity. Paramilitarism in the State of Colombia, 1988-2003* Editorial Códice, Bogotá, December 2004, p.316. Petitioners' allegations on the merits received on March 10, 2008, para.185.

<sup>218</sup> Annex 78. Brief of the State of August 12, 2003, in the proceedings of MC-70-99.

Case File No.	Events	Implicated persons	Procedural Stage
155-48718-2000	"irregularities when self-defence groups violently forced villagers of Riosucio, Chocó, to abandon their homes, during 1997."	Members of the National Army in Riosucio, Chocó	Statute of limitations applied on January 27, 2003. Officials of the Procurator's Office under investigation.
155-6251-2001	"omission of the Security Forces to prevent paramilitary presence in Cacarica during 1999 and 2000."	Members of the National Army in Riosucio Chocó, to be identified.	On May 31, 2002, the preliminary inquest was extended for six months.
155-58322-2001	Possible actions or omissions by civil servants in relation to dredging work in the Perancho and Peranchito rivers and sufficiency of pipes in the Cacarica River in 200 (sic)"	Civil servants of the Department of Transport in Bogotá and others to be established	On December 12, 2002, it was consolidated with proceedings No. 155-58324-2001 and 155-58323-2001
155-58324-2001	Alleged failure to fulfill an agreement on the supply of medicines for the displaced in Cacarica during 2002.	Officials from the Ministry of Health in Bogotá and others to be established	On December 12, 2002, it was consolidated with proceeding No. 155-58322-2001
155-58323-2001	Alleged failure to supply food to the displaced of Cacarica during 2002.	Officials of the Social Solidarity Network of the Office of the Presidency, to be established.	On December 12, 2002, it was consolidated with proceeding No. 155-58322-2001
155-33124-1990	Irregularities due to illegal trafficking of natural resources in the west of Colombia	Director of the Regional Autonomous Corporation and General Secretary of CODECHOCO	On December 19, 2002, a single instance decision was issued ordering the removal of the Director and Secretary of CODECHOCO.
008-068210-2002	Murder of Ramiro Vásquez occurring on February 7, 2002.	Still under investigation	At the preliminary stage

#### d. Judicial Proceedings relating to Forced Displacement

207. In 1997, 56 *tutela* remedies were filed before judges in Medellín, Turbo, Riosucio and Bogotá against the President of the Republic for forced displacement. The *tutelas* requested protection for the rights to life, equality, ethnic diversity, peace, the rights of the child, to a home, social security and food due to the displacement and its precarious and inhuman subsistence conditions. They requested *restitutio in integrum* of the situation prior to the displacement, in

adequate conditions, with guarantees and self-determination; and fulfillment by the National Government of the Plan of Assistance to the Displaced Population.<sup>219</sup>

208. On May 27, 1997, the President of the Republic responded negatively to the whole 56 remedies maintaining: (i) that the aim of the *tutela* action is not that of protecting collective rights; (ii) that the Security Forces do not tolerate or support the presence of illegal armed groups; and (iii) that the Government had created a Committee to deal with the displaced.<sup>220</sup>

209. Of the 56 *tutelas*, 12 were decided favorably for the petitioners. The dismissals were justified on the basis that: (i) the *tutela* is not a mechanism to protect collective rights; (ii) the lack of territorial jurisdiction since the events had occurred outside the range of jurisdiction, this being the most repeated argument; (iii) that the right to peace and the application international treaties could not be protected by way of a *tutela*, due to its exceptional character; (iv) that there had been no evidence of a risk to the right to life, food and work; and (v) that the displacement of the civilian population in Colombia was due to the internecine struggle that for years has spawned illegal groups.<sup>221</sup>

210. The favorable decisions established that the displaced "should be provided with adequate conditions of security, such as asserted by Dr. Ernesto Samper Pizano, President of the Republic of Colombia, in the response referred to in the arguments".<sup>222</sup>

211. A complaint was filed in court against the President of the Republic for non compliance, contempt of court and fraud of a judicial resolution.<sup>223</sup> This complaint was rejected on September 10, 1997, considering that the Government was indeed complying with the order and reference was made to instructions for the Armed Forces, who should protect the displaced as they returned.<sup>224</sup>

212. On December 13, 1999, the Vice-Presidency of the Republic reached a series of agreements with the displaced communities in the Cacarica basin; and undertook to request from

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<sup>219</sup> Annexes 23, 24 and 25. *Tutela* actions presented by Rosalba Córdoba Rengifo, Pascual Ávila Carmona, Pedro Manuel Pérez against the President of the Republic in Many 1997. Annex 26. *Tutela* action presented by Hermenegilda Mosquera Murillo against the President of the Republic. Annex 10 to the petitioners' brief dated March 10, 2008.

<sup>220</sup> Act No. 003447 signed by Ernesto Samper Pizano, of May 27, 1997. Petitioners' allegations on the merits received on March 10, 2008, para.187. Cf. Annex 41. First instance *tutela* judgment of the Civil Circuit Judge of Turbo on May 29, 1997, in favor of eight plaintiffs, mentioned in the President's response. Annex to the original petition of June 1, 2004.

<sup>221</sup> See Annexes 79, 80 y 81. Decisions issued by the Third and Sixth Judges of the Civil Circuit of Medellín rejecting the *tutela* suits presented by Rosalba Córdoba Rengifo, Pascual Ávila Carmona and Pedro Manuel Pérez Florez due to a lack of competence on May 6, 1997. Annexes to the original petition of June 1, 2004.

<sup>222</sup> Annex 41. First instance *tutela* judgment of the Civil Circuit Judge of Turbo on May 29, 1997, in favor of eight plaintiffs. Annex to the original petition of June 1, 2004.

<sup>223</sup> Annex 82. Complaint on non compliance with *tutela* judgments against the President of the Republic, presented by Antonio Rene Córdoba, William Quejada Mosquera, Nora María Mosquera, Rosalba Córdoba Rengifo, Pascual Ávila Carmona, Jesús Arcilo Hurtado Quinto, Pedro Manuel Pérez Flores, Leovigildo Quinto Mosquera, Luis Emiro Quinto, Lourdes del Carmen Ortiz, Guillermo Vergara Serrano and Jesús Adán Quinto before the Civil Circuit Judge of Turbo, Antioquia on May 29, 1997. Annex to the initial petition of June 18, 2004.

<sup>224</sup> SOLDEPAZ Pachakuti and other organizations. *We Demand Justice for Colombia. World Calls against the Observance of Crimes and Impunity*. Bogota, D.C., 2004, p.23. Petitioners' allegations on the merits received on March 10, 2008, para.190.

the investigating bodies and the judicial branch periodic reports on the state of the investigations, the perpetrators of the forced displacement and the murders.<sup>225</sup>

## C. Determinations of Law

### 1. Prior Considerations

213. In Admissibility Report No. 86/06, the Commission noted that "collective claims alleging violations of the rights of particularly vulnerable groups, which include communities of African descent, warrant special treatment. In the case under examination, the individual identification of the victims vis-à-vis the Commission's competence to examine the merits of the claim must acknowledge the victims' status as Afro-descendants, their form of community existence, and their collective landholding mechanisms, together with the predominance of women and children among the displaced population."<sup>226</sup> Before starting with the legal analysis it is appropriate to clarify the nature and breadth of the applicable rules.

214. The Commission will make a broad interpretation of the rights in the American Convention based on other international instruments relevant to the case, by virtue of its Article 29.b, which allows a more comprehensive characterization of the facts.<sup>227</sup> In this regard, both the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "the Court") as well as the European Court of Human Rights (hereinafter the "European Court") have underlined the living nature of the international human rights instruments and the necessity to interpret them coherently with "the changes in the times and the current living conditions."<sup>228</sup> In addition, the Inter-American Court has established that "certain acts or omissions that violate human rights, pursuant to the treaties that they do not have competence to apply, also violate other international instruments for the protection of the individual"<sup>229</sup> By virtue of this and with attention to the nature of the events denounced, as well as to the context of the internal armed conflict in which they unfolded, the Commission will consider it necessary to have regard to other international instruments of international humanitarian law<sup>230</sup> which the State of Colombia has ratified,<sup>231</sup>

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<sup>225</sup> Annex 57. Agreement for return between the Cacarica Basin Displaced Communities Temporarily Settled in Turbo, Bocas de Atrato and Bahía Cupica and the National Government of December 13, 1999. Annex to the original petition of June 1, 2004.

<sup>226</sup> IACHR, Report No.86/06, Petition 499-04, Admissibility, Marino López et al.(Operation Genesis) Colombia, October 21, 2006, para. 38.

<sup>227</sup> Article 29(b) establishes that no provision of the American Convention can be interpreted to "restrict the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party ". See I/A Court H.R. *Case of Río Negro of the Maya Indigenous People and its Members* (Massacre of Río Negro), July 14, 2010, para. 224.

<sup>228</sup> I/A Court H.R. *Case of "the Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 192-193. See *Case of Río Negro of the Maya Indigenous People and its Members* (Massacre of Río Negro), July 14, 2010, para. 225.

<sup>229</sup> I/A Court H.R. *Case Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 208. See *Case of Río Negro of the Maya Indigenous People and its Members* (Massacre of Río Negro), July 14, 2010, para. 225.

<sup>230</sup> In this sense the IACHR recalls that the Inter American Court has referred to the norms of international humanitarian law and their value in terms of interpretation of individual cases. See, *inter alia*, I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of 1 March 2005. Series C No. 120, para. 110 et seq.; *Case of Las Palmeras v. Colombia*. Preliminary Objections. Judgment of February 4, 2000. Series C No. 67, para. 32. I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of 25 November 2000. Series C No. 70, para. 208. See *Case of Río Negro of the Maya Indigenous People and its Members* (Massacre of Río Negro), July 14, 2010, para. 225.

<sup>231</sup> Convention for the Prevention and Punishment of the Crime of Genocide ratified by Colombia on October 27, 1959. Geneva Conventions of August 12, 1949, ratified by Colombia on November 8, 1961. Source: ICRC. *Status of Ratification of the main IHL Treaties*. September 14, 2010. In:

permitting a comprehensive interpretation and application of the content and breadth of the rights protected by the American Convention.<sup>232</sup>

215. The events of the present case are framed in the context of the internal armed conflict of Colombia, which does not exonerate the State from respecting and guaranteeing respect for basic human rights of individuals not directly involved, in accordance with the provisions of Common Article 3 of the Geneva Conventions.<sup>233</sup> In this regard, the Commission considers that the State has general and special duties to protect the civilian population under its care, derived from international humanitarian law.<sup>234</sup>

216. The Commission will take into account in its analysis the phenomenon of internal forced displacement and its particular effect on especially vulnerable groups. In its Third Report published in 1999, a product of its 1997 *in loco* visit,<sup>235</sup> the IACHR indicated that the nature and causes of this human rights situation in Colombia were numerous. To this end, it stressed that

In addition to the violence associated with the armed conflict, especially violence attributable to extremists on both the right and the left, there are other sources of violence that bring death or other violations of fundamental rights. Drug trafficking, abuses of authority, socio-economic violence rooted in social injustice and land disputes are but some of the sources of violence which have led to the deterioration of the human rights situation in Colombia.<sup>236</sup>

217. In this respect, in Admissibility Report No.86/06, the Commission took into account that the Guiding Principles of Internally Displaced Persons issued in 1998 by the Representative of

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...continuation

[http://www.icrc.org/web/spa/sitespa0.nsf/html/party\\_main\\_treaties](http://www.icrc.org/web/spa/sitespa0.nsf/html/party_main_treaties). See *Case of Río Negro of the Maya Indigenous People and its Members* (Massacre of Río Negro), July 14, 2010, para. 225, date in which it was added to the constitutional rules.

<sup>232</sup> See, *inter alia*, IACHR, Report 57/97, Case 11.137, of November 18, 1997, para. 167. See *Case of the Río Negro Community of the Indigenous Maya People and its members (Río Negro Massacre)*, July 14, 2010, para. 225.

<sup>233</sup> Article 3 - In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

<sup>234</sup> See IACHR. *Case of the Río Negro Community of the Indigenous Maya People and its members (Río Negro Massacre)* July 14, 2010, para. 228.

<sup>235</sup> The Commission conducted an *in loco* visit to Colombia between December 1, and 8, 1997. Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Introduction, para. 14.

<sup>236</sup> Annex 15. Third Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. I, para. 1. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

the United Nations Secretary General proved to be particularly relevant in defining the content and breadth of Article 22 of the Convention in the context of an internal forced displacement and that given the situation of an internal armed conflict, the regulations on displacement contained in Protocol II to the 1949 Geneva Conventions are especially useful. Specifically, Article 17 of Protocol II prohibits the ordering of the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. In this case, "all possible measures" shall be taken "in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition."<sup>237</sup> In this regard, the Inter-American Court has confirmed the utility and applicability of the said rules and has also resorted to the criteria established by the Constitutional Court of Colombia in the sense that "in the case of Colombia, the application of these rules by the parties in the conflict is particularly imperative and important since the current armed conflict has seriously affected the civilian population as demonstrated, for example, by the shocking data on the forced displacement of individuals."<sup>238</sup>

218. In addition, the Inter-American Court has established that "under the terms of the American Convention, the differentiated situation of displaced persons places States under the obligation to give them preferential treatment and to take positive steps to reverse the effects of the said condition of weakness, vulnerability, and defenselessness, also *vis-à-vis* actions and practices of private third parties."<sup>239</sup>

219. The Commission will also taken into account the special impact of the armed conflict on Afro-descendant women and children and will employ the concept of the international *corpus juris* for the protection of rights of persons under the age of 18, in order to establish the content and scope of Article 19 of the American Convention.<sup>240</sup>

220. In Admissibility Report No. 86/06, the Commission determined its competence to examine the claim presented both in respect of the alleged violation of the rights of Marino López as well as those of the victims from 22 communities displaced from the Cacarica basin, i.e.: Puente América, Bijao-Cacarica, Quebrada del Medio, Bogotá, Barranquilla, El Limón-Peranchito, Santa Lucía, las Pajas, Quebrada Bonita, La Virginia, Villa Hermosa- la Raya, San Higinio, Puerto Berlín, Puerto Nuevo, Montañita Cirilo, Bocachica, Balsagira, San José de la Balsa, La Balsa, Bendito Bocachico, Varsovia, and Tequerré Medio.<sup>241</sup>

221. In their allegations on the merits, the petitioners have referred to 23 communities, the La Honda community being the one that was not mentioned in the Admissibility Report. It is appropriate to point out that La Honda Community is part of the Community Council of the River

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<sup>237</sup> Article 17 of Protocol II to the 1949 Geneva Conventions.

<sup>238</sup> IACHR., Report No.86/06, Petition 499-04, Admissibility, Marino López et al.(Operation Genesis) Colombia, October 21, 2006, para. 43.

<sup>239</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 179.

<sup>240</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 153, *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Preliminary Objections. Judgment of September 11, 1997. Series C No. 32, paras. 194 and 196; *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 166, and *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 148.

<sup>241</sup> IACHR, Report No.86/06, Petition 499-04, Admissibility, Marino López et al. (Operation "Genesis") Colombia, October 21, 2006, para. 37.

Cacarica basin, as Resolution No. 841 of 1999<sup>242</sup> of INCORA shows.<sup>243</sup> This resolution is a public document issued by a State organ, and therefore La Honda should be considered part of the communities displaced, relevant to the present report.

222. It is also appropriate for the Commission to state that to the effects of the present case during the merits stage, the petitioners singled out a group of victims, including: Marino López and his immediate family; members of the Afro-descendant communities displaced from Cacarica associated in CAVIDA; the Afro-descendant women head of household displaced from Cacarica who are living in Trubo, who are listed in Annex 1 to this report. The total number of victims listed in Annex 1 - not including Marino López and his immediate family - amounts to 446 individuals,<sup>244</sup> of whom 149 are women and 117 are children or adolescents.<sup>245</sup>

223. Finally, the Commission takes into consideration that the State of Colombia has a Single Registry of Displaced Peoples as required by Law 387 of 1997, in which a number of the alleged victims in the present case are currently registered (identified).<sup>246</sup>

## **2. Responsibility of the State under International Law and the Nature and Role of Paramilitary or Self-Defense Groups**

224. Before turning to the analysis of the allegations on the violation of the American Convention, it is appropriate for the Commission to consider whether the acts of the individuals implicated in the events referred to in the paragraphs above relating to the enjoyment of fundamental rights may be attributed to the State of Colombia and, consequently, compromise its responsibility in accordance with international law. For this, as the Inter-American Court has stated, it is sufficient to demonstrate that there has been State support or tolerance of a breach of the rights recognized in the Convention.<sup>247</sup>

225. In the first place, as the IACHR has established in its Third Report, it is right to point out that the State has played an important role in the spread of the so-called paramilitary or self-defense groups whom it has allowed to act with legal protection and legitimacy in the decades of the seventies and eighties,<sup>248</sup> and it is responsible in a general way for their existence and strength.<sup>249</sup>

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<sup>242</sup> The La Honda community is included in INCORA Resolution No. 841 on the continuation of the collective title of the Cacarica river basin Community Council of April 26, 1999. See Annex 1. Cited by Constitutional Court Judgment T-955/2003 of October 17, 2003, p. 5. Annex 15 to the petitioners' brief of March 10, 2008.

<sup>243</sup> INCORA, now INCODER, is a State organ assigned to the Ministry for Agriculture and Rural Development.

<sup>244</sup> Victim No. 275 in the Annex is not identified by name but only by number in the displaced persons' register.

<sup>245</sup> Annex 83. Census of victims of forced displacement - Operation Genesis. Annex to petitioner's brief of March 23, 2009. The children or adolescents are those who were indicated as "minors" in the list presented by the petitioners.

<sup>246</sup> See displaced persons registration number Annex I to this report. Annex 83. Census of victims of forced displacement - Operation Genesis. Annex to petitioner's brief of March 23, 2009.

<sup>247</sup> I/A Court H.R. I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 110, *Case of Paniagua Morales et al.*, Judgment of March 8, 1998, para.91. IACHR Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 60.

<sup>248</sup> In effect, Decree 3398 of 1965 (Law of National Defense) and Law 48 of 1968 authorized the creation of civilian patrols that would receive weapons for private use from the State security forces under authorization from the Ministry of Defense. Article 25 of Decree 3398 of 1965 established that "All Colombians, both men and women, not included in the call to obligatory military service, may be used by the Government in activities and work with which they may contribute to reestablishing normalcy". IACHR Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 61.

<sup>249</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. IV, para. 236. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. IACHR Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 61.

226. These groups, sponsored or tolerated by sectors of the Military Forces, were in large part created in order to combat dissident armed groups.<sup>250</sup> As a result of their counterinsurgent aims, the paramilitaries have established links with the Colombian Army which strengthened during more than two decades. Finally, on May 25, 1989, the Supreme Court of Justice declared paragraph 3 of Article 33 of Legislative Decree 3398 of 1968 unconstitutional, which gave a lawful platform for the creation of self-defense groups,<sup>251</sup> and withdrew the legal support for its links with national defense, after which the State enacted a series of legislative measures to criminalize the activities of these groups and those supporting them.<sup>252</sup> Despite this, the State has done little to dismantle the structure they created and fostered, particularly when these groups lead counterinsurgency activities, in fact, the links have endured at different levels, in some cases, requesting or allowing the paramilitaries to undertake certain illegal acts on the understanding that they would not be subject to investigation, trial or punishment.<sup>253</sup> The acceptance of these groups by certain sections of the Army has been denounced by entities of the State itself.<sup>254</sup>

227. This situation has led the Commission, for the purpose of determining the international responsibility of the State in accordance with the American Convention, to establish that in those cases where paramilitaries and members of the Army perform joint operations with the knowledge of superior officers, or when the paramilitaries operate thanks to the acquiescence or collaboration of the Security Forces, it must be held that the members of the paramilitary groups are operating as State agents.<sup>255</sup>

228. The Court has also recognized that the State's international responsibility may also be generated by attributing to it acts violating human rights committed by third parties or private individuals, in the framework of the State's obligations to guarantee respect for these rights between individuals. In this regard, the Court has stressed that

[s]aid international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between it and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst

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<sup>250</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. I, paras. 7-19. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. IACHR Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 62.

<sup>251</sup> Articles 25 and 33 of Legislative Decree 3398 (Law of National Defense) and Law 48 of 1968 provided a legal basis for the creation of "self-defense groups". Cf. I/A Court H.R., *Case of the 19 Tradesmen v. Colombia*. Judgment of July 5, 2004. Series C No. 109, para. 84 g).

<sup>252</sup> Decrees 1149 of June 8, 1989 and 2266 of 1991. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 62.

<sup>253</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. I, paras. 17-19. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. See also Annex 14. Report of the UN High Commissioner for Human Rights (UNHCHR) on the Colombia Office, April 2000, para. 30. At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.16.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.16.En?Opendocument). See also IACHR. Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 62.

<sup>254</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. IV, paras. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>. 37-239. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 62.

<sup>255</sup> IACHR. Report No.37/00 *Monseñor Oscar Arnulfo Romero and Galdámez*, para. 64. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 63.

individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1.1 and 2 of the Convention.<sup>256</sup>

229. The lack of effective action in dismantling the paramilitary structures emerges *inter alia* from an analysis of the numerous human rights violations committed by the paramilitaries in the period under examination and in subsequent years, acting for themselves or with the connivance or collaboration of State agents, *vis-à-vis* the high levels of impunity these events continue to enjoy. Both the Inter-American Commission as well as the United Nations High Commissioner for Human Rights have consistently commented upon the high level of impunity for human rights violations committed as a consequence of criminal trials and disciplinary investigations initiated against members of the Security Forces and paramilitaries which do not result either in establishing responsibility, or appropriate punishment, as is occurring in the present case.<sup>257</sup>

230. The Commission reiterates that the State objectively created a situation of danger for its inhabitants and did not adopt all necessary and adequate measures to prevent them from being able to continue to commit acts such as those in the present case. As the Inter-American Court has established, formally declaring the paramilitary groups to be illegal must be translated into the adoption of sufficient and effective measures to avoid the consequences of the danger created. Whilst the danger persists, there must be increased emphasis on the special duties of prevention and protection charged to the State and on the obligation to investigate diligently the acts or omissions of State agents and private individuals committing outrages against the civilian population.<sup>258</sup> Starting from these parameters, the Commission will turn to examine the alleged violations of the American Convention and other Inter-American Instruments in the actual case.

### **3. The Impact of "Operation Genesis", its Bombings and the Paramilitary Raids on the Communities' Personal Security**

231. It is apparent from the findings of fact that violence in the area had worsened during the months prior to "Operation Genesis", especially towards the end of 1996. The paramilitary groups had announced that they would be taking control of the area. It was reasonable therefore that the State, present in the area through the XVII National Army Brigade, was aware of the danger the threats of paramilitary raids posed for the Afro-descendant communities.

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<sup>256</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111. Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 72.

<sup>257</sup> *Cf.*, Annex 84. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005, para. 92; See: [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004\\_eng.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004_eng.pdf); Annex 85. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2004/13, of February 17, 2004, paras. 26, 27, 28 and 77; See: [www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003\\_eng.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003_eng.pdf); Annex 86. Report of the UNHCHR on the situation of human rights in Colombia in the year 2002, E/CN.4/2003/13, February 24, 2003, para. 77; See: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/1304674285b7eb3bc1256cf5003906fb?Opendocument>; Annex 87. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2002/17, February 28, 2002, paras. 211, 212 and 365; See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/111/15/PDF/G0211115.pdf?OpenElement>; Annex 88. Report of the UNHCHR on the situation of human rights in Colombia in the year 2000, E/CN.4/2001/15, March 20, 2001, paras. 57, 142, 206 and 254. See: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html); and Annex 89. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 27, 47, 146 and 173. See: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html)

<sup>258</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 126. IACHR Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 67.

232. This dangerous situation for the civilian population and the fact that the said population belongs to a group especially vulnerable to having their human rights violated compels the State to recognize a special duty of protection in this case. Therefore, the Commission considers that for the specific case it was reasonable to think that the risk warranted that the State adopt measures appropriate to this special duty of prevention and protection of the civilian Afro-descendant population; therefore Colombia had the obligation to adopt them but did not do so.<sup>259</sup>

233. Article 5 of the American Convention provides that

1. Every person has the right to have his physical, mental and moral integrity respected.
  2. No one shall be subjected to torture or to cruel, inhuman, degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- [...]

234. This right is of fundamental importance within the system of guarantees of the American Convention. It is enshrined in its Article 27.2 as a right that it may not be suspended in the case of war, public danger, or other emergency threatening the independence or security of the States party to the said international instrument.

235. With regard to prevention and protection, the Commission observes, as the Inter-American Court has indicated, that a State clearly cannot be responsible for every violation of human rights committed between private individuals within its jurisdiction. In effect, the *erga omnes* character of the Convention's obligations does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. That is to say, not every act, omission or event of an individual carries with it the judicial consequence of violating the specific human rights of another individual, and is not automatically attributable to the State. Regard must be had to the particular circumstances of the case and to the precise nature of the obligations of guarantee.<sup>260</sup>

236. The positive obligation of the State to adopt operative measures to prevent the violation of rights arises, when it is established that at the time of the events, the authorities knew, or ought to have known, of the existence of a real and imminent danger to the life of an identified individual or certain individuals with respect to the criminal acts of third parties, and that these authorities failed to take the measures within the scope of their powers that, judged reasonably, could be expected to be taken to avoid the said danger.<sup>261</sup>

237. In conformity with Article 29.b of the American Convention,<sup>262</sup> and as the Inter-American Court has emphasized in the *Case of the Mapiripán Massacre v. Colombia*

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<sup>259</sup> IACHR. Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 76.

<sup>260</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C No. 140, paras. 123 and 124. IACHR Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 65.

<sup>261</sup> Eur. Ct. H.R., *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93, paras. 62 and 63; *Osman v. United Kingdom*, Judgment of October 28, 1998, paras. 115 and 116. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 74.

<sup>262</sup> Article 29.b of the American Convention on Human Rights - Rules of Interpretation: "No provision of this Convention shall be interpreted as: [...] b restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party [...]."

with regard to establishment of the international responsibility of the State in the instant case, the Court cannot set aside the existence of general and special duties of the State to protect the civilian population, derived from International Humanitarian Law, specifically Article 3 common of the August 12, 1949 Geneva Agreements and the provisions of the additional Protocol to the Geneva Agreements regarding protection of the victims of non-international armed conflicts (Protocol II). Due respect for the individuals protected entails passive obligations (not to kill, not to violate physical safety, etc), while the protection due entails positive obligations to impede violations against said persons by third parties. Carrying out said obligations is significant in the instant case, insofar as the massacre was committed in a situation in which civilians were unprotected in a non-international armed conflict.<sup>263</sup>

238. Common Article 3 of the Geneva Conventions expressly prohibits under all circumstances violence against "persons not participating directly in hostilities"<sup>264</sup> For its part, Article 13 of Protocol II enshrines the principle of civilian protection in the following terms:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.<sup>265</sup>

239. Within these parameters, the Commission will assess whether the events described involve the international responsibility of the State for the execution and planning of "Operation Genesis" and for the paramilitary raids.

240. The Commission observes that it was the State itself that ordered and carried out a military operation whose bombardment caused damages to the civilian population, without protective or preventive measures being taken. With respect to the military counterinsurgency operation known as "Operation Genesis" - ordered by State agent Rito Alejo Del Río Rojas - the Commission emphasizes that the State has general and special duties to protect the civilian population under its care, derived from international humanitarian law, and observes that the bombings in the said operation were carried out indiscriminately, with no respect for the principle of distinction set out in Additional Protocol II to the Geneva Conventions.<sup>266</sup> Operational Order No.004/Genesis does not establish the adoption of preventive measures to avoid acts of violence and to protect the civilian population, nor to avoid the indiscriminate bombing of the communities,<sup>267</sup> as for example, the evacuation of the civilian population prior to the bombing, or

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<sup>263</sup> I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 114.

<sup>264</sup> Colombia ratified the Geneva Conventions on November 8, 1961. Available at: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>.

<sup>265</sup> Colombia ratified the Additional Protocol II to the Geneva Conventions on August 14, 1995. Available at: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P>.

<sup>266</sup> In Article 13 of Additional Protocol II to the Geneva Conventions of August 12, 1949 relating to the protection of the victims of non-international armed conflicts reaffirms the principle of distinction: "(.) 1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances. 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." Colombia ratified this Protocol on August 14, 1995.

<sup>267</sup> Colombian Military Forces. National Army XVII Brigade. Operational Order No. 004/Genesis. Annex to petitioners' brief of March 23, 2009.

establishing precise bombing targets in areas uninhabited by the communities. These indiscriminate bombardments comprised a series of actions that caused fear and endangered the security and personal integrity of the members of the Cacarica Afro-descendant communities; and caused their displacement.

241. The Commission also notes clear indications about the operational coordination between members of the Army and paramilitary groups,<sup>268</sup> and observes the dynamic of the development of both operations, such as, *inter alia*, the fact that the bombardments of "Operation Genesis" took place moments before or after the raids by the paramilitary squad Elmer Cárdenas; that the check points or security rings were integrated by members of the paramilitary groups and members of the Army; and the witness statements on the holding of coordination meetings between paramilitary commanders and the Army. In addition, the Commission considers that the Inter-American Court has already established that there were either joint actions or acquiescence, collaboration, or tolerance, manifest by act or omission, of members of the Armed Forces and paramilitary groups in Colombia during the period that the events took place (July of 1997).<sup>269</sup>

242. The Commission notes that during the paramilitary raids, acts of violence were committed against members of the Cacarica communities, such as being pointed out, shooting to intimidate the population, throwing grenades onto the roofs of dwellings, ransacking of property and burning of buildings; together with the order to move out to Turbo. The said operations occurred in community after community. Thus, after the "Operation Genesis" bombardments, on February 26, and 27, 1997, a paramilitary raid took place in the Bijao hamlet, and then another in Puente América and another in Bocas del Limón.

243. Finally, it is appropriate to point out that from a comprehensive reading of the context, the background and the events of the present case, the Commission observes - in the area and at the period of the events - the existence of a systematic pattern of operations of the kind described throughout the current report. In this sense, it considers that the acts were committed against a background of systematic violence suffered by members of the Cacarica Afro-descendant communities, which constitutes a crime against humanity.

#### **4. Marino López's Death in the context of the Attacks Causing the Displacement**

244. From the findings of fact it is apparent that the acts of torture, decapitation and dismemberment of Marino López were not isolated incidents, but took place against a predetermined background and with a specific objective: to terrorize the population to achieve their forced displacement.<sup>270</sup>

245. Article 4.1 of the American Convention establishes that "[e]very person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life." The right to life commands special importance because it is the essential premise for the realization of the other rights.

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<sup>268</sup> This is apparent from the many eyewitness statements as well as from those who were members of paramilitary groups and from the Army, respecting the participation in joint armed operations. Thus the Ombudsman of Colombia and the UNHCHR have remarked. The Commission observes that the checkpoints were comprised of paramilitary groups and members of the Army. "[...] the first of the ACCU, the second comprised of soldiers of the XVII Brigade and a third made up of members of the AUC and the XVII Brigade" and that the person in command was "Major Salomón".

<sup>269</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 120.

<sup>270</sup> 14th Prosecutor of the UDH. Decision on the judicial situation of Rito Alejo Del Río Rojas, case file no. 2332 of September 12, 2008, pp.17-18. Annex 1 to the petitioners' brief received on May 19, 2009.

246. Article 5 establishes that

1. Every person has the right to have his physical, mental and moral integrity respected.
  2. No one shall be subjected to torture or to cruel, inhuman, degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- [...]

247. As has been stressed, these rights enjoy a fundamental importance, given that they are non-derogable in times of war, public danger or other threats to the independence or security of the States party to the American Convention, as is established in Article 27.2.

248. Additionally, the Commission recalls that the Court has established that

torture [...] or cruel, inhuman or degrading treatment are strictly prohibited by international human rights law. The prohibition of torture or cruel, inhuman or degrading treatment is absolute and non-derogable, even in the most difficult circumstances, such as war, the threat of war, the fight against terrorism, and any other crime, martial law or state of emergency, civil war or commotion, suspension of constitutional guarantees, internal political instability, or any other public disaster or emergency.<sup>271</sup>

249. The Court has emphasized that fulfillment of the obligations imposed by Article 4 of the American Convention, in relation to Article 1.1 "not only requires that no person be arbitrarily deprived of their life (negative obligation), but also requires that the States take such steps as may be necessary to protect and preserve the right to life (positive obligation), under its duty to ensure free and full exercise of the rights of all persons under its jurisdiction. This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those who should safeguard security, be they police forces or armed forces."<sup>272</sup> Consequently, in the words of the Court

the States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively.<sup>273</sup>

250. Within these parameters, the Commission will consider whether the events described involve the international responsibility of the State for a lack of prevention and protection. In this respect, as already established by the Commission, the events surrounding the torture and death of Marino López are framed against the background of the internal armed conflict in Colombia, and specifically the carrying out of "Operation Genesis", whose indiscriminate bombing worsened the violent situation suffered by the Cacarica Afro-descendant communities, of which Marino López was a member.

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<sup>271</sup> I/A Court H.R., *Case of Acosta Calderón v. Ecuador*, Judgment of June 24, 2005. Series C No. 129, para. 125; Judgment of September 7, 2004. Series C No. 114, para. 143; *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004. Series C No. 110, para. 111; and *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003. Series C No. 103, para. 89.

<sup>272</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 232. Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 71.

<sup>273</sup> I/A Court H.R., *Case of la "Massacre de Pueblo Bello"*. Judgment of January 31, 2006, para. 120. Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 71.

251. In the present case, as the Commission has already established in the above paragraphs (see supra IV.B.3), that the "Operation Genesis" bombardment, as well as the paramilitary raids took place in the context of a systematic attack suffered by the members of the Cacarica Afro-descendant communities, carried out by the National Army and its joint operations with paramilitary groups. The Commission refers to its analysis and findings on the State's responsibility for the military raids and "Operation Genesis".

252. In the present case, it has been proved through convincing evidence that on February 27, 1997, at the Bijao hamlet, the peasant Marino López was tortured and murdered by members of the Elmer Cárdenas paramilitary group. In actual fact, they detained him and pinned him by the arms; he asked them to let him go, and they forced him to take off his shirt and boots, tied his hands behind his back, kicked him about, and violently pushed him to the banks of the river. Then with a machete "they drew a line in the direction of his neck as if to cut off his head" and Marino received a cut on the left shoulder and began to bleed. Marino López jumped into the river, and after being threatened, came back to the bank and stretched out his hand to be helped out, but was beheaded with a machete. The upper body of Marino López remained on the river bank, they cut off his arms up to his elbows, his two legs up to his knees, and with the point of the machete they opened his stomach and left the body to roll down the bank until it reached the water. His hands stayed entangled in the branches of an fallen orange tree, they carried his head like a trophy and threw it into an open space: saying "look, he has the face of a monkey, the s.o.b." and showed his head to the population as a warning sign, and when it fell to the floor, they kicked it between themselves like a ball, passing it to each other for approximately ten minutes.

253. The Commission reiterates that in the present case, the torture and death of Marino López were not isolated incidents but occurred in a premeditated context with the specific aim of terrorizing the population to cause their forced displacement.

254. The Commission concludes, in the first place, that beyond the assessment of the evidence on the material responsibility for the torture and death of Marino López, it is appropriate to apply the criteria of State responsibility for the acts committed by members of a paramilitary group, given that it did not diligently adopt the measures necessary to protect the civilian population in terms of the circumstances described.<sup>274</sup> Therefore, it is proper to conclude that acts of violence committed by the private individuals who tortured and murdered Marino López are attributable to the State.

255. In the second place, the Commission observes that it was the State itself that ordered and carried out a military operation whose bombardment caused damages to the civilian population, without protective or preventive measures being taken. Creating such an objective situation of danger for the civilian population increased the context of violence in which the torture and death of Marino López occurred. Therefore, the Commission concludes that the State is responsible for the violations of the rights to personal integrity and life of Marino López, committed as a result of the acts or omissions of its agents.

256. Finally, it is appropriate to reiterate that from a comprehensive reading of the context, background and events of the present case, the Commission observes - in the area and the period of the events - the existence of a systematic pattern of operations of the nature described throughout the present report. Therefore, it is appropriate for the IACHR to emphasize that - just as the Inter-American Court has acknowledged - the commission of an extrajudicial execution in the

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<sup>274</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 140. IACHR Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 69.

context of systematic attacks against a civilian population constitutes a crime against humanity<sup>275</sup>. The International Criminal Court for the former Yugoslavia (hereinafter "ICC") has ruled in the same direction in the case *Prosecutor v. Duško Tadić*, considering that "a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable."<sup>276</sup>

257. In the present case, the Commission observes that the torture and murder of Marino López took place in the context of systematic violence against members of the Cacarica Afro-descendant communities,<sup>277</sup> by the National Army during a military operation and joint operations with paramilitary groups; designed to cause terror to the population. Therefore, the torture and murder of Marino López constitute a crime against humanity<sup>278</sup>.

258. Finally, it is appropriate to state that, with respect to the allegations of a violation of Articles 1 and 8 of the Convention to Prevent and Punish Torture, in its Admissibility Report No.

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<sup>275</sup> The Court stated in the *Case of Almonacid-Arellano* that the prohibition on committing crimes against humanity is a jus cogens rule and the punishment of such crimes is obligatory, in accordance with general principles of international law. In its decision, the Court acknowledged the elements established in the Nuremberg Charter with respect to the characterization of the deprivation of life in the context of generalized or systematic attacks against civilians, as a 'crime against humanity'. Specifically, Article 6 sets out that "the Tribunal established by the Agreement referred to in Article 1...shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes: [...] (c) [c]rimes against humanity, namely: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated." Similarly, in 1950, the International Law Commission of the United Nations included murder among the acts which could represent a crime against humanity in its *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*. Report of the International Law Commission, A/1316 (A/5/12), 1950, Part III, paras. 95-127, Yearbook of the International Law Commission, 1950, Vol. II. Available at: [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_34.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_34.pdf) See I/A Court H.R., *Case of Almonacid-Arellano et al. v. Chile*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, paras. 96 to 99 and *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para. 42 and IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 108.

<sup>276</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY), case *Prosecutor v. Dusko Tadic*, IT-94-1-T, Opinion and Judgment, May 7, 1997, para. 649. This was subsequently confirmed by the same court in *Prosecutor v. Kupreskic, and others*, IT-95-16-T, Judgment of January 14, 2000, para. 550, and *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgment of February 26, 2001, para. 178 and I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, para. 42. IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 108.

<sup>277</sup> Murder and torture are characterized as crimes against humanity by Article 7.1.a and f of the Statute of the ICC of 1998, whenever committed as part of a widespread or systematic attack directed against the members of any civilian population. Rome Statute of the ICC, approved on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, A/CONF.183/9.

<sup>278</sup> The term crime against humanity is used throughout the present report in accordance with the criteria established by the Inter-American Court, with the purpose of assessing the legal consequences of alleged violations *vis-à-vis* the State's obligations. "When examining the merits in cases of serious human rights violations, the Court has taken into account that, if they were committed in the context of massive and systematic or generalized attacks against one sector of the population, such violations can be characterized or classified as crimes against humanity in order to explain clearly the extent of the State's responsibility under the Convention in the specific case, together with the juridical consequences. Hence, the Court in no way attempts to attribute a crime to any natural person. In this regard, the need for comprehensive protection of the individual under the Convention has led the Court to interpret its provisions through their convergence with other norms of international law, particularly with regard to the prohibition of crimes against humanity, which is jus cogens, without this implying that it has exceeded its powers, because, it should be reiterated that, in doing so, it respects the authority of the criminal jurisdiction to investigate, indict and punish the individuals responsible for such crimes. What the Court does, in accordance with treaty-based law and customary law, is to employ the terminology used by other branches of international law in order to assess the legal consequences of the alleged violations *vis-à-vis* the State's obligations." *Case of Manuel Cepeda Vargas v. Colombia*. Judgment of May 26, 2010. Series C No. 213, para. 42.

86/06, the Commission declared that "the petitioners' claim is limited to the obligation of ensuring the immediate, ex officio investigation of acts of torture committed against persons under the jurisdiction of the state, pursuant to Articles 1 and 8 thereof. Given the date of the Colombian State's ratification of the Convention to Prevent and Punish Torture, determining responsibility for acts of torture or inhumane treatment suffered by the alleged victims in the instant case is covered by Article 5 of the American Convention."<sup>279</sup>

259. Consequently, the Commission concludes that the State is responsible for the extrajudicial execution of Marino López, as well as for the violation of its obligation to adopt the necessary measures to prevent violations and protect his life, in violation of Articles 4.1, 5.1 and 5.2 of the American Convention, in conjunction with Article 1.1. It also concludes that the extrajudicial execution of Marino López was committed in a context of systematic violence against members of the Cacarica Afro-descendant communities, and therefore constitutes a crime against humanity.

260. The Commission must also take into account the impact that the acts of torture and extrajudicial execution of Marino López had for his immediate family.

261. Article 5 of the American Convention establishes that

1. Every person has the right to have his physical, mental and moral integrity respected.  
[...]

262. In view of the parties' positions, in the first place, the Commission understands that Marino López's immediate family are his children and partner, Emedelia Palacios Palacios.

263. The Commission and the Court have considered the right to physical and moral integrity of the victims' families to be violated each time that the particular circumstances of the violations committed against their loved ones and the subsequent acts or omissions of the State authorities have caused them additional suffering.<sup>280</sup>

264. In view of the acts of torture and extrajudicial execution of which Marino López was a victim, the Commission concludes that the State is responsible for the violation of the right to personal integrity to the prejudice of his immediate family, in violation of Article 5.1 of the American Convention, in conjunction with its Article 1.1.

265. With respect to the petitioners' allegations on the affront against the right to family protection, the Commission considers that the facts involved the alleged violation of this right have already been considered in relation to the violation of the physical and moral integrity of Marino López's immediate family.<sup>281</sup>

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<sup>279</sup> Colombia deposited its instrument of ratification of the Convention to Prevent and Punish Torture on January 19, 1999. IACHR, Report No.86/06, Petition 499-04, Admissibility, Marino López et al. (Operation Genesis) Colombia, October 21, 2006, para. 39.

<sup>280</sup> I/A Court H.R. *Case of the Miguel Castro Castro Prison v Peru*. Judgment of November 25, 2006. Series C No. 160, para. 335; *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, para. 96; and *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para. 96; *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, para. 137. IACHR Report No. 62/08 Manuel Cepeda Vargas, para. 111.

<sup>281</sup> I/A Court H.R. *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 197; *Case of García Asto and Ramírez-Rojas*, Judgment of November 25, 2005. Series C No. 137, para. 245 and *Case of Tibí*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para.205..

## 5. The Forced Displacement of the Cacarica Afro-Descendant Communities due to Attacks against the Civilian Population

266. In accordance with the findings of fact regarding the consequences of the bombardments in "Operation Genesis", the announced paramilitary raids and the acts of violence occurring in this context - *inter alia*, the acts of torture and extrajudicial execution of Marino López - approximately three thousand five hundred individuals were forced to move out of the Cacarica basin, from February 24, 1997. Members of paramilitary groups made death threats to the civilian population and intimidated them so that they would displace from their lands towards Turbo. The torture and extrajudicial execution of Marino López increased the fear and hastened the displacement. These persons left on foot or in rafts built by them. Approximately two thousand three hundred displaced persons settled temporarily in the municipality of Turbo and in Bocas del Atrato; around two hundred crossed the border with Panama; and the rest were displaced to other areas of Colombia.

267. The displaced Afro-descendants suffered a series of consequences which impacted disproportionately on the women and children such as, for example, families split up, a lifestyle change in the settlements in cramped conditions, the lack of access to basic services, food, and adequate health services, as well as the subsequent increase in disease and malnutrition, among others.

268. The Guiding Principles on Internal Displacement define internally displaced persons as all persons or groups of persons who have been forced or obliged to flee their places of habitual residence, in particular as a result of, or to avoid, the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>282</sup> Colombian law also defines the concept of displacement, using a similar definition to the Guiding Principles.<sup>283</sup>

269. In his introductory report to the Guiding Principles, Francis Deng stressed that

[o]ften the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in which discrimination features significantly, displacement nearly always generates conditions of severe hardship and suffering for the affected populations. It breaks up families, cuts social and cultural ties, terminates dependable employment relationships, disrupts educational opportunities, denies access to such vital necessities as food, shelter, and medicine, and exposes innocent persons to such acts of violence as attacks on camps, disappearances and rape. Whether they cluster in camps, escape into the countryside to hide from potential sources of persecution and violence or submerge into the community of the equally poor and dispossessed, the internally displaced are among the most vulnerable populations, desperately in need of protection and assistance.<sup>284</sup>

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<sup>282</sup> Annex 90. UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. See: <http://www.un-documents.net/gpid.htm>.

<sup>283</sup> Article 1 of Law 387 establishes that: an individual is displaced when he is forced to move within the national territory, abandoning his place of residence or habitual economic activities, because his life, physical integrity, security or personal liberty has been affected or is being directly threatened, in any of the following situations: internal armed conflict, disturbances and internal unrest, widespread violence, massive violations of human rights, breaches of IHL or other circumstances emanating from the foregoing situations which may drastically disturb public order. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 11.

<sup>284</sup> Annex 90. Introductory note to the Guiding Principles, para. 1. United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. See: <http://www.un-documents.net/gpid.htm>.

270. Both the Commission and the Inter-American Court have established that Colombia is affected by a generalized situation of internal forced displacements caused by the internal armed conflict. This phenomenon, which began in the decade of the eighties, has become progressively worse<sup>285</sup> and is such that on September 30, 2009, the Sole Displaced Population Register of Colombia recorded a total of 3,226,442 internally displaced persons.<sup>286</sup>

271. In its Third Report, the Commission paid special attention to the phenomenon of internal displacement, considering it one of the most serious aspects of the general human rights situation in Colombia, and a humanitarian disaster. It considered that the situation of the displaced persons was particularly tragic and cruel, and there were a disproportionate number of persons requiring attention and special services, such as children, elderly people and pregnant women.<sup>287</sup>

272. In the said report, the IACHR stressed that in 1996, the Ombudsman evaluated that

the migration of these people arises from the fact that members of the military and police, paramilitary organizations, and armed groups force them to flee their homes and occupations to avoid death, torture, insults, and other misfortunes visited on their relatives, friends and neighbors. Displacement in Colombia is the joint responsibility of all sides in the conflict and reveals that the warring factions have an utter contempt for basic principles of humanity.<sup>288</sup>

273. Amnesty International, for its part, emphasized that

[i]n the vast majority of cases, displacement of the civilian population is not a casual, sporadic or inevitable by-product of counter-insurgency operations - it is a crucial tool in the armed forces' strategy to combat the insurgent forces. Targeted areas are 'cleansed' of the real or potential support base of the guerrillas and repopulated with peasant farmers who are paramilitary supporters.<sup>289</sup>

274. The Commission considered that paramilitary groups were the major cause of collective displacement of the rural population. It found that the upsurge in paramilitary activity in those years had centered on thinning out or cleansing the civilian population suspected of aiding or contributing to the logistics of dissident armed groups or those occupying lands which the paramilitary groups wish to acquire.<sup>290</sup>

275. In addition, in its Third Report, the Commission found that while displaced persons "are entitled to enjoy in free equality the same rights and freedoms...as the rest of the country's citizenry", in practice they rarely do, since displacement in and of itself essentially contradicts the

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<sup>285</sup> In 2005, the Inter-American Court pointed out that the phenomenon of displacement "currently affects a population which varies between 1.5 and 3 million displaced persons." I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 173.

<sup>286</sup> For its part, Consultancy for Human Rights and Displacement (CODHES) speaks of a total of 4, 629, 190 internally displaced persons up until the end of 2008. Annex 91. IACHR Annual Report, 2009, Chap. IV Colombia. OEA/Ser.L/V/II. Doc. 51 corr. 130 December 2009, para. 82.

<sup>287</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, paras. 1 and 2. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>288</sup> Ombudsman's Office, Ombudsman's Third Annual Report to the Congress of Colombia, 1996, p. 82, Cited in: IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 63. <http://www.cidh.org/countryrep/Colom99sp/capitulo-6.htm> - 27#27.

<sup>289</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 64. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>290</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 75. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

enjoyment of basic human rights.<sup>291</sup> It maintained that internally displaced persons do not forfeit their inherent rights because they are displaced and they may invoke international human rights and, where relevant, humanitarian law to protect their rights.

276. The Commission also indicated that towards the end of 1997, the Permanent Consultation on Internal Displacement in the Americas ("CPDIA") released its report, compiled following several on-site visits to Colombia. In this report, it mentioned the following general and specific impacts or consequences of displacement: 1) defenselessness and isolation of displaced communities during both emergency periods and return or resettlement, together with a lack of humanitarian assistance through integral, inter-institutional and multi-disciplinary projects; 2) as a result of these shortcomings displaced persons have no possibility of legal access to new homes, lands, or jobs, and are forced to undertake a struggle for survival, competing amongst themselves to secure a space in "squatter slums or illegal urban settlements"; 3) breakup of families and communities, and dissipation of social ties in general; 4) swift-moving process of concentration of rural properties to the disadvantage of the population, along with drastic changes in land use and ownership.<sup>292</sup>

277. In addition, the Commission considers that the psycho-social consequences of displacement, which often pass unheeded, have accelerated the destruction of the social fabric and have contributed to the impoverishment of the population, the disintegration of the family, malnutrition, sickness, alcoholism, drug addiction, prostitution, school absenteeism and common crime.<sup>293</sup>

278. With regard to the disproportionate impact displacement has on women, according to CODHES figures, 59% of displaced people are women, many of them widows with several children; of these, 65% are themselves minors. It indicated that such a magnitude augurs great fragility in the family unit, given that in many resettlement areas, women must shoulder family responsibilities alone, while the men look for some kind of work in or away from the immediate vicinity of their new location.<sup>294</sup> As regards the children, the Colombian Episcopal Conference recorded that approximately 70% of displaced persons were minors.<sup>295</sup>

279. The State also recognizes the breadth and scope of the problem and Colombian legislation provides for rules on internal displacement.<sup>296</sup> The Constitutional Court of Colombia, for its part, issued a comprehensive judgment in which it considered the *tutela* remedies lodged by 1,150 displaced families. In its judgment, the Court declared that the situation of more than three

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<sup>291</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Cap IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 4. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>292</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Cap IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 24. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>293</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 25. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>294</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 26. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>295</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 29. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>296</sup> Law 387 of 1997 "adopts measures for prevention of enforced displacement, assistance, protection, consolidation, and socio-economic stabilization of persons displaced by violence" and provides a series of mechanisms for guaranteeing such rights for the displaced and for preventing the causes of displacement. Cf. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. VI. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 12.

million<sup>297</sup> displaced individuals was alarming and referred to the situation of vulnerability of the displaced in the following terms:

from the circumstances surrounding the internal displacement, the persons who are obliged "to abruptly abandon their place of residence and habitual economic activities, being forced to move to another place within the frontiers of the national territory" to flee the violence generated by the internal armed conflict, and the systematic disregard of human rights and international humanitarian law, remain exposed to a much greater level of vulnerability, which implies a grave, massive and systematic violation of their fundamental rights, and, thus, deserve to be granted special attention by the authorities: "The persons displaced by violence find themselves in a debilitated state which merits their receiving special treatment on the State's part." In the same order of ideas, the Court indicated that "the necessity of slanting the State's political agenda to the solution of internal displacement and the duty to give it priority over many other issues on the public agenda", given the fundamental impact that this phenomenon exercises on national life, due to its scale and psychological, political and socio-economic consequences.<sup>298</sup>

280. The Constitutional Court has also determined that the humanitarian crisis caused by the phenomenon of internal displacement is of such magnitude that it may be categorized as a "true state of social emergency"; "a national tragedy, affecting the destinies of countless Colombians and will scar the Country's future for the next decades" and "a serious danger for the political society of Colombia." It established that it involves a "massive, prolonged and systematic violation" of a whole range of fundamental rights, whose content it interpreted in the light of the Guiding Principles on Forced Displacement.<sup>299</sup>

281. The Constitutional Court also declared that the situation of the persons displaced by the violence in Colombia constitutes "an unconstitutional state of affairs". It established that there is a massive and repeated violation of the human rights of the displaced population and the structural failings of the State's policies are a key contributing element.<sup>300</sup> The Court ruled on the creation of an action plan to overcome the unconstitutional state of affairs in the absence of public policies on displacement; making every possible effort to obtain the necessary funding required to attend to the displaced and to guarantee the effective enjoyment of the essential content of the basic rights of a displaced population. The Constitutional Court also recognized in the Afro-descendant population the nature of subjects needing special constitutional protection, justifying "the adoption of positive differentiation measures, which will serve their special state of vulnerability and defenselessness and will tend, through preferential treatment, to contribute to the effective enjoyment of their rights."<sup>301</sup>

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<sup>297</sup> Second highest number of displaced persons in the world after the Sudan. See Annex 20. United Nations High Commissioner for Refugees (UNHCR) 2009. *2008 Global Trends, Asylum- Seekers, Returnees, Internally Displaced and Stateless Persons*. In: <http://www.unhcr.org/4a374c426.html>.

<sup>298</sup> Cf. Annex 21. Constitutional Court of Colombia. Judgment T-025/04 of January 22, 2004. See I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 174. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

<sup>299</sup> Cf. Annex 21. Constitutional Court of Colombia. Judgment T-025/04 of January 22, 2004. See *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 176. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

<sup>300</sup> Annex 21. Constitutional Court of Colombia. Judgment T-025/04 of January 22, 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

<sup>301</sup> Annex 21. Constitutional Court of Colombia. Judgment T-025/04 of January 22, 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

282. In the follow-up on compliance of the said judgment, the Court issued two orders of special relevance to the present case. Order 005 of 2009, on protection of the fundamental rights of the population of Afro-descendant victims of the forced displacement and Order 092 of 2008 on displaced women. In 2009, the Court ordered the Director of Social Action in his role as coordinator of the National Comprehensive Aid System for the Displaced Population, to demonstrate that the unconstitutional state of affairs had been overcome before the Second Revision Chamber of the Constitutional Court in July 2010.<sup>302</sup>

283. In Order 005, the Constitutional Court undertook an exhaustive analysis about the need for a differentiated approach which would take into account the diversity of the displaced Afro-descendants. In this respect, the Constitutional Court specified that the fundamental rights of the members of Afro-descendant populations are harmed by forced displacement since they are "specially protected groups 'by reason of the precarious conditions confronting persons who are forced to displace'".<sup>303</sup> In addition, the Court has recognized the State's international agreements<sup>304</sup> in matters of the international law of human rights and international humanitarian law, which "oblige the authorities to adopt a preventive approach to force displacement which should be sufficiently differentiated and specific in order to influence the basic causes of this phenomenon and its disproportionate impact on Afro-descendant communities and their members".<sup>305</sup> In this decision, the Constitutional Court recognized the lack of prioritized and differentiated attention to these populations and ordered the different State institutions to implement the appropriate policies for the effective enjoyment of the fundamental rights of the displaced Afro-descendant population.<sup>306</sup>

284. In Order 092 of 2008, relating to the protection of the fundamental rights of women displaced by the armed conflict, the Constitutional Court observed that forced displacement has a disproportionate impact on women for various risks relating to gender identified as causes of displacement.<sup>307</sup>

285. In terms of the American Convention, displacement also generates the obligation to provide special treatment in favor of those affected and to adopt positive measures to reverse its

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<sup>302</sup> Annex 21. See IACHR Annual Report 2009, Ch. IV Colombia, paras. 87 and 88. See: <http://www.cidh.org/annualrep/2009sp/cap.4Colo.09.sp.htm>.

<sup>303</sup> Annex 62. Constitutional Court, Order 005-09, January 26, 2009. See IACHR Annual Report 2009, Ch. IV Colombia, para. 119. See: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>304</sup> The Constitutional Court recognizes in relation to the applicable international obligations that [...] iii) the American Convention on Human Rights reiterates the obligation of states parties to undertake 'to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color [...], national or social origin, economic status, birth, or any other social condition' (Art. 1) and the right of all persons to "equal protection of the law, without discrimination" (Art. 24). Annex 62. Constitutional Court, Order 005-09, January 26, 2009. See IACHR Annual Report 2009, Ch. IV Colombia, para. 120. See: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>305</sup> See Annex 91. IACHR Annual Report 2009, Ch. IV Colombia, para. 120. See: <http://www.cidh.org/annualrep/2009sp/cap.4Colo.09.sp.htm>.

<sup>306</sup> Annex 62. Constitutional Court, Order 005-09, January 26, 2009. See: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>. On October 30, 2009, the State presented a report on the progress in fulfilling Order 005 of 2009 to the Constitutional Court. See IACHR Annual Report 2009, Ch. IV Colombia, para. 121.

<sup>307</sup> Annex 92. Constitutional Court of Colombia, Order 092 de 2008, First Resolution in the Judgment. See IACHR Annual Report 2009, Follow-up Report Violence and Discrimination against Women in the Armed Conflict in Colombia, para. 29. Corte Constitucional, Auto 092 de 2008, Punto Resolutivo Primero. En: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

effects, including *vis-à-vis* acts and practices of individual third parties,<sup>308</sup> such as has already been established (see *supra*, IV C.2).

286. As has already been pointed out (see *supra*, IV C.1), the Guiding Principles for Internal Displacement of 1998 are of particular relevance when defining the content and scope of Article 22 of the Convention in the context of internal displacement,<sup>309</sup> and the rules on displacement contained in Protocol II to the Geneva Conventions of 1949 prove to be especially useful. Specifically Article 17 of Protocol II prohibits ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. And in this last case, "all possible measures" should be taken "in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." In this regard, the Constitutional Court of Colombia had already considered in 1995 that, "in the case of Colombia, furthermore, the application of these rules by the parties in the conflict is particularly imperative and important, since the armed conflict raging in the country has gravely affected the civilian population, as shown, for example, by the alarming data on the forced displacement of individuals".<sup>310</sup>

287. The Commission also recalls that the Constitutional Court has emphasized

that to confront the situation of internal displacement, which presents one of the greatest problems caused by the conflict, Colombia has adopted a series of measures at the legislative, administrative and judicial levels, including numerous laws, decrees and documents of the National Council for Economic and Social Policy, and presidential resolutions and directives. Among these measures Law No. 387 of July 18, 1997 should be mentioned, which defines the concept of displacement and grants a special legal status to individuals in this situation. In turn, a large variety of public policies have been developed in relation to the problem of displacement, including production programs, links with the private sector and various aid programs. However, the Constitutional Court of Colombia itself declared "the existence of an unconstitutional state of affairs in the situation of the displaced population, due to the lack of coincidence between the seriousness of the violation of the rights recognized in the Constitution and developed by law, on the one hand, and the resources effectively available to ensure the proper enjoyment of such rights and the institutional capacity to implement the appropriate constitutional and legal orders, on the other".<sup>311</sup> In particular, it determined that despite the efforts made by various State entities to mitigate the problems faced by the displaced population and the important progress achieved, it has proved impossible to protect completely the rights of the displaced population, and to offset the serious worsening in their conditions of vulnerability, due in the main to the precariousness of the institutions' ability to implement State policies and assigning insufficient resources.<sup>312</sup>

288. The Commission recalls as well that the Inter-American Court has established that

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<sup>308</sup> I/A Court H.R. *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 210; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 179.

<sup>309</sup> Cf. Annex 91. UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. See: <http://www.un-documents.net/gpid.htm> See also, I/A Court H.R. *Case of the Moiwana Community*, June 15, 2005. Series C No. 124, paras. 113 to 120 and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 171.

<sup>310</sup> Cf. Annex 93. Constitutional Court of Colombia. Judgment C-225/95 of May 18, 1995, para. 33. At: <http://www.corteconstitucional.gov.co/relatoria/1995/c-225-95.htm>. See I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 172.

<sup>311</sup> Cf. Constitutional Court Judgment T-025/04 of January 22, 2004. I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 182.

<sup>312</sup> Cf. Constitutional Court Judgment T-025/04 of January 22, 2004. I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 182.

[i]n view of the complexity of the phenomenon of internal displacement and of the broad range of human rights affected or endangered by it, and bearing in mind said circumstances of special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights, their situation can be undertaken as an individual de facto situation of lack of protection with regard to the rest of those who are in similar situations. This condition of vulnerability has a social dimension, in the specific historical context of the domestic armed conflict in Colombia, and it leads to the establishment of differences in access of displaced persons to public resources managed by the State. Said condition is reproduced by cultural prejudices that hinder the integration of the displaced population in society and that can lead to impunity regarding the human rights violations against them.<sup>313</sup>

289. Within these parameters and bearing in mind the complexity of the phenomenon of internal forced displacement and the wide range of human rights affected and endangered,<sup>314</sup> the Commission will begin by considering whether the facts described involve the State's responsibility with respect to a number of rights which are inextricably interlinked and affected by forced displacement and its consequences under consideration in this analysis. In this way, the Commission will analyze the impact on the right to free movement and residence, personal integrity, family protection, the rights of the child, to property, and on the guarantee to respect rights free from discrimination.

#### **Forced Displacement and the Restriction on the Right to Free Movement and Residence**

290. From the findings of fact it can be inferred that the Afro-descendants of the Cacarica basin communities endured forced displacement for four years, away from their places of origin, from February 1997 until March 2001.

291. Article 22.1 of the American Convention establishes that "[e]very person lawfully in the territory of a State party has the right to move about in it, and to reside in it subject to the provisions of the law." The exercise of this right may only be restricted pursuant to specific laws for reasons of public interest. The Inter-American Court has stated that the right to free movement and residence is an essential condition for the free development of the person<sup>315</sup> and consists, *inter alia*, of the right of everyone lawfully within a State to move freely within it and to choose his place of residence.<sup>316</sup>

292. Taking account of the applicable rules of interpretation and in accordance with Article 29.b of the Convention, which prohibits a restrictive interpretation of these rights, the Inter-American Court has considered that Article 22.1 of the Convention protects the right not to be

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<sup>313</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 177.

<sup>314</sup> *Cf. Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 186.

<sup>315</sup> I/A Court H.R. *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 206; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 168; I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 110; and I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 115.

<sup>316</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 168; I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 110; and I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 115. See, in the same sense, Annex 94. UN Human Rights Committee, General Comment No. 27 of November 2, 1999, paras.1, 4, 5 and 19. At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6c76e1b8ee1710e380256824005a10a9](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6c76e1b8ee1710e380256824005a10a9).

forcibly displaced.<sup>317</sup> The Inter-American Court has established that free movement is an indispensable condition for the free development of the individual<sup>318</sup> and has recognized that the United Nations Human Rights Committee, in its General Comment No.27, establishes that the right to free movement and residence is comprised of, inter alia: a) the right of everyone lawfully with the territory of a State to move freely within that State and to choose his or her place of residence; and b) the right of an individual to enter his country and remain therein. The Court has established that the enjoyment of this right does not depend on any objective or particular motive of the person wishing to travel or remain in a place.<sup>319</sup>

293. The circumstances of the present case and the special and complex situation of risk to the human rights of displaced persons, include and go beyond the content of the protection due by the States in the framework of Article 22 of the Convention.<sup>320</sup>

294. The Commission has already determined that the forced displacement suffered by the members of the Cacarica communities was caused both by "Operation Genesis" as well as the paramilitary raids, and that these were coordinated operations (see supra IV C.2.). In effect, the displacement originated in the danger generated by the State as well as the lack of prevention and the absence of protection suffered by the Cacarica communities.

295. These persons remained displaced for four years, between February 1997 and March 2001. In 2001, the return and resettlement of the members of the Cacarica communities in "Esperanza en Dios" and "Nueva Vida" took place in three phases until March 2001, supported by the State and with the aid of the international community. As aid for the communities' return, the State provided "food for work" to three hundred families, supplied sanitation kits, plates and cooking utensils, fuel, boat repairs, tools and materials, among other things. In addition, the State provided health teams and medicines.

296. The Commission understands the enormous challenge facing the State of Colombia in confronting the grave situation of internal displacement and recognizes the efforts made in this direction. The Commission also values the humanitarian aid, the medical assistance and support lent by the State to the displaced people in their places of refuge. In addition, it appreciates that the State has supported the return of a group of displaced to "Nueva Vida" and "Esperanza en Dios"; that it was planned taking account of each family; and that a group of displaced persons have benefitted from the relief aid and the housing improvement project (see supra III.B). The Commission reiterates, however, that the State did not adopt preventive and protective measures before the imminent displacement.

297. Consequently, from the foregoing, the Commission considers that the State is responsible for the violation of Article 22 of the American Convention, to the prejudice of the

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<sup>317</sup> I/A Court H.R. *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 207; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 188 and UN Human Rights Committee, Communication No. 859/1999: Colombia. April 15, 2002, para. 7.4.

<sup>318</sup> *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 168. Cf. *Case of the Moiwana Community*, June 15, 2005. Series C No. 124, para. 110, and *Case of Ricardo Canese*, Judgment of August 31, 2004. Series C No. 111, para. 115.

<sup>319</sup> *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 168. Cf. *Case of the Moiwana Community*, June 15, 2005. Series C No. 124, para. 110, and *Case of Ricardo Canese*, Judgment of August 31, 2004. Series C No. 111, para. 115. United Nations Human Rights Committee, General Comment No. 27, November 2, 1999, paras. 1, 4, 5 and 19.

<sup>320</sup> *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 186.

members of the displaced communities of Cacarica associated with CAVIDA and the women head of household living in Turbo.

### **The Forced Displacement and the Right to Personal Integrity**

298. From the findings of fact it is apparent that the transfer of the displaced from their places of origin to three refuge points, the living conditions of the displaced in those receiving areas, and the acts of harassment, threats and violence during the period of displacement, constituted a breach of their personal integrity.

299. Regarding Article 5, the Court has established that

[t]he right to physical, mental and moral integrity of all persons and the obligation of the State to treat the individuals...with respect for the inherent dignity of the human person, entails the reasonable prevention of situations that may impair protected rights.<sup>321</sup>

300. As established in the preceding section, displacement also generates the obligation to bestow special treatment in favor of those affected and to adopt measures of a positive nature to reverse its effects.

301. With regard to the living conditions of especially vulnerable groups, the Inter-American Court has ruled on the State's duty to provide them with sufficient and adequate water, food and health services as part of its obligation to guarantee a dignified life.<sup>322</sup> It has also ruled on the State's duty to adopt positive and specific measures aimed at satisfying the right to a dignified life, especially when it involves vulnerable and at risk persons, whose attention is a matter of priority.<sup>323</sup> The Court has also established that displacement has affected the right to a dignified life.<sup>324</sup>

302. Based on these parameters, it is appropriate for the Commission to examine the situation of violence and security and the living conditions during the displacement which affected the right to personal integrity of the displaced persons.

303. In the first place, the Commission has established in the foregoing paragraphs that the State did not adopt measures designed to prevent the breach of the right to personal integrity of the members of the Cacarica basin before the imminent displacement. In the second place, from the visit made by the IACHR to the Turbo Stadium and the State's response and the proceedings in precautionary measures No. 70/99, it is apparent that the displaced continued to be harassed, threatened, disappeared and killed which prompted the IACHR to grant precautionary measures in favor of the displaced persons. The constant threats and acts of violence were also a reason why these people continued to be displaced without being able to return to their lands for over four

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<sup>321</sup> I/A Court H.R. *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 118; *Case García Asto and Ramírez Rojas*, Judgment of November 25, 2005. Series C No. 137, para. 222; *Case of Caesar v. Trinidad and Tobago*. Judgment of March 11, 2005. Series C No. 123, para. 59; and *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 100.

<sup>322</sup> I/A Court H.R. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, paras. 195 et seq.

<sup>323</sup> I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 162.

<sup>324</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 134.

years. During this period the State failed to establish the conditions that would allow the displaced persons' safe return.<sup>325</sup>

304. In addition, even after their resettlement in the areas of return ("Nueva Vida" and "Esperanza en Dios") the displaced continued to be targets of harassment, threats and violence, which justified the precautionary measures remaining in force until the date of approval of the present report. Despite the fact that the displaced have returned to their land with the assistance of the State, the Commission observes that the State failed to ensure the conditions that would allow those who have returned to fully enjoy their right to personal integrity, and that the situation of insecurity and danger continues. Finally, the Commission reiterates that not all of those displaced have returned to their place of origin, and there are those who continue to be in a state of forced displacement.

305. While the displaced were settled in Turbo, the State failed to provide food and water in sufficient quantities. In November 1997, it officially suspended the aid to 75 families for lack of funds, and illnesses increased, in particular among the children who in various cases suffered from malnutrition and other diseases. The displaced suffered overcrowded conditions and their living conditions in 1999 were difficult. The majority of the displaced were sleeping on the floor with no privacy.

306. The State aided the undertaking of minimum works of basic sanitation (drainage and piping of waste water), and from February 1999 until March 2001, it paid for water and electricity services at the dwellings and the stadium. In 1999, the State co-financed a school and provided educational materials and implements for a kitchen, classroom and kindergartens. It also lent food aid between May 1999 and December 6, 2000 and from November 1999 it organized access to medical care. It also lent agricultural aid. However, the displaced lacked adequate and sufficient basic hygiene, food, housing, health and educational services.

307. During the displacement to Panama, some children were lost in the jungle and after settling in impromptu camps in the Darién region were forced to return to Colombia. Some were initially crowded into a dwelling in Apartadó without adequate sanitation. One group was forcefully transferred by the State to Bahía Cupica and placed on a farm. The displaced only had access to one doctor and there were no medicines for serious illnesses. The displaced received food aid from the State between January 2000 and December 6, 2000. However, the State did not provide them with adequate or sufficient humanitarian assistance.

308. In this respect, the Commission recalls that the United Nations Committee on Economic, Social and Cultural Rights has established that the State must guarantee that persons have access at least to sufficient essential and nutritionally adequate food to protect them against starvation.<sup>326</sup>

309. The Commission recognizes and appreciates the initiatives undertaken by Colombia with regard to the humanitarian aid given to the displaced in the Turbo settlement, and that it aided the return of the displaced and assisted them (see supra III.B). In this respect, for the period under analysis, there was a consensus among national observers and representatives of international organizations that Colombia had made some efforts to try to provide solutions for the displaced persons, but that the policy adopted up until now to confront the displacement has not been

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<sup>325</sup> See I/A Court H.R., *Case of Moiwana*, Judgment of June 15, 2005, Series C No. 124, para. 120.

<sup>326</sup> Annex 95. United Nations ECOSOC. General Comment No. 12. The Right to Adequate Food (Art.11), May 12, 1999, para. 14.At: <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>.

sufficient.<sup>327</sup> Therefore the Commission considers that regarding the situation of forced displacement under analysis, the measures adopted by the State were insufficient and inadequate for reversing the condition of vulnerability of the displaced persons.

310. Regarding the State's allegations that the humanitarian aid provided prevented or minimized the damages caused by the displacement and the consequences of human rights violations, and that it repaired the damages caused, the Commission believes it is relevant to reiterate the difference between the concepts of "reparations" and "humanitarian aid". In actual fact, the Commission has emphasized that "the concept of reparations is based on a principle of liability or legal obligation, in contrast to an *ex gratia* payment."<sup>328</sup> In this sense, the victims of displacement have the right to obtain reparations for gross violations committed by the State that have been determined by legal action, as it has been established by the Conseil d'Etat in its decisions.<sup>329</sup> This is in contrast to the State's obligation to lend assistance in humanitarian crises. The Commission understands that these State obligations are of a different nature and origin; therefore in the present case, the fact that humanitarian assistance has been provided specifically for the displaced is independent of the State's obligation to make reparations to the victims of displacement.

311. In view of the above, the Commission considers that the State is responsible for a violation of Article 22 of the American Convention in relation to Articles 5 and 1.1, to the prejudice of the members of the Cacarica displaced communities associated with CAVIDA and the women head of household living in Turbo.

312. Finally, it is appropriate for the Commission to examine the petitioners' allegations with reference to arguments that were not considered in Admissibility Report No. 86/06. In actual fact, they have alleged the State's responsibility for the violation of the right to a dignified life and to the protection of the displaced people's honor and dignity and consider that this is set forth in Articles 4 and 11 of the American Convention. The State, for its part, maintains that the case only refers to the events characterized in Admissibility Report No. 86/06 and that the allegations of violations of Articles 11 and 4 of the American Convention to the prejudice of the displaced persons cannot form the basis of the case on the merits.

313. In this respect, it should be noted that the allegations of law presented at the merits stage are based on events known to the State since the admissibility stage; thus the State has had adequate opportunity to contest them. The Commission has taken these facts into account and considers that the alleged breach of the right to a dignified life and to the protection of honor and dignity has already been examined in relation to the violation of the personal integrity of the displaced persons.

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<sup>327</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 80. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>328</sup> Anex 96. IACHR *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008, para. 7. At: <http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf>.

<sup>329</sup> Cf. IAnnex 96. ACHR *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008, para. 6. At: <http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf>.

## The Forced Displacement and the Arbitrary and Abusive Interference with Family Life

314. From the findings of fact it is apparent that the violence of the armed operations and the displacement had an affect on the family life of the displaced communities of the Cacarica basin. Families were forced to abandon their homes, some suffered from separation or being split up and they were prevented from living the type of family life that they had developed in accordance with their customs.

315. Article 17.1 of the American Convention establishes that: "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state." For its part, Article 11.2 of the same instrument provides that: "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."

316. The Inter-American Court has established that the right to the family may be seen as a complement to the positive obligation to protect the family enshrined in Article 17.1, understood as a fundamental aspect of society<sup>330</sup> and to the State's negative obligation, referring to the duty to abstain from causing arbitrary or abusive interference with the family surroundings<sup>331</sup> established in Article 11.2 of the Convention. The European Court has also established that the contents of the right to family life must also comprise this double viewpoint.<sup>332</sup>

317. The relevant facts were of the knowledge of the State since the beginning of proceedings; thus the State has had adequate opportunity to contest them. In view of these elements and applying the principle of *iura novit curia*, which permits international organs to apply all the relevant legal provisions, the Commission will apply Article 11 of the American Convention in its analysis.

318. Additionally, Article 19 of the American Convention which consecrates the rights of the child, also guarantees the rights of the family. In this respect, the Court has established that

The child has the right to live with his or her family, which is responsible for satisfying his or her material, emotional, and psychological needs. Every person's right to receive protection against arbitrary or illegal interference with his or her family is implicitly a part of the right to protection of the family and the child, and it is also explicitly recognized by Articles 12(1) of the Universal Declaration of Human Rights, V of the American Declaration of the Rights and Duties of Man, 17 of the International Covenant on Civil and Political Rights, 11(2) of the American Convention on Human Rights, and 8 of the European Human Rights Convention. These provisions are especially significant when separation of a child from his or her family is being analyzed.<sup>333</sup>

319. The Court has established that the said norm must be understood as an additional and complementary right, which the Convention establishes for persons who by their physical and

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<sup>330</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 66.

<sup>331</sup> I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2008. Series C No. 192, para. 55; and *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 200, para. 113.

<sup>332</sup> Eur. Ct. H.R., *Nuutinen v. Finland*, Application No. 32842/96, Judgment of June 27, 2000, para. 127; *Hokkanen v. Finland*, Application No. 19823/92, Judgment of September 23, 1994, para. 55; and *Keegan v. Ireland*, Application No. 16969/90, Judgment of May 26, 1994, para. 49.

<sup>333</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 71

emotional development need special protection.<sup>334</sup> Children, therefore, are entitled both to the human rights of everyone else, as well as those special rights derived from their particular condition of vulnerability and which involve specific duties of the family, society and the State.<sup>335</sup> Also in accordance with the overriding interests of the child, based on their own characteristics, is the necessity of fostering their development, fully maximizing their potential, as well as their own dignity as human beings.<sup>336</sup>

320. In order to determine the scope of the right to protection of the family regarding children, the Inter-American Court and the Commission<sup>337</sup> have referred to the *corpus juris* of the human rights of children.<sup>338</sup> In this respect the Convention on the Rights of the Child, to which Colombia is a party,<sup>339</sup> establishes the relationship of the special duty of protection for children and the institution of the family in the following way

8.1. States Parties undertake to respect the right of the child to preserve his or her [...] family relations as recognized by law without unlawful interference.

9.1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child [...]<sup>340</sup>

321. The Court has established that due to the importance of the right to protection of the family, the State has the duty to favor the development and strengthening of the family nucleus.<sup>341</sup> In addition, both the Inter-American Court and the European Court have recognized that the mutual enjoyment of cohabitation between parents and children constitutes a fundamental element in family life.<sup>342</sup>

322. For its part, Article 42 of the Constitution of Colombia establishes that the State "and society shall guarantee the complete protection of the family." The Constitutional Court of

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<sup>334</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, para. 106; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 244; and *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 113.

<sup>335</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para.54. I/A Court H.R. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 257.

<sup>336</sup> I/A Court H.R. *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 244. See also I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 134; I/A Court H.R. *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 134; and I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, para. 172. *Case of Chitay Nech et al. v. Guatemala*. Judgment of May 25, 2010. Series C No. 212, para. 164.

<sup>337</sup> IACHR Report No. 41/99, Case 11.491, Merits, Detained Minors, Honduras, March 10, 1999, para. 72.

<sup>338</sup> I/A Court H.R. *Case of "the Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194

<sup>339</sup> Colombia has ratified the Convention on the Rights of the Child since January 28, 1991.

<sup>340</sup> United Nations Convention on the Rights of the Child, November 20, 1989.

<sup>341</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62.

<sup>342</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 72. See also: Eur. Ct. H.R., *Case of Buchberger v. Austria*, Application No. 32899/96, Judgment of December 20, 2001, para. 35; *Case of T and K v. Finland*, Application No. 25702/94, Judgment of July 12, 2001, para. 151; and *Case of Johansen v. Norway*, Application No. 17383/90, Judgment of August 7, 1996, para. 52.

Colombia has recognized that the destruction of communities and families by forced displacement not only affects the community and family structure of the Afro-descendant communities, but also above all the breakdown in the mechanisms for the construction of collective and individual life plans for each one of the generations.<sup>343</sup>

323. In the light of this, the Commission will analyze the right to protection of the family contained in Articles 17.1, 11.2 and 19 of the American Convention. Within these parameters, the Commission will consider the State's responsibility with respect to its obligation to protect the family.

324. From the findings of fact, the Commission observes that due to the forced displacement, the families of the Cacarica communities were obliged to leave their homes and resettle as displaced persons for four years in dire humanitarian conditions. During the move, they lost their families, and since they moved to three different settlements (Turbo, Bocas del Atrato, and Bahía Cupica) some families were split up and were separated for four years. In addition, given the living conditions in these settlements, the displaced were deprived of living the type of life they enjoyed in their homes, in accordance with their traditional customs of Afro-descendant communities, which represents a breach of the right to protection of the family. The State, for its part, supported the September 2000 family reintegration phase of the displaced community settled in Bahía Cupica with their family and friends settled in Turbo, with the transfer of 201 individuals.

325. Without prejudice to the fact that the State has been found responsible for generating the displacement under analysis, the Commission observes that once the displacement has taken place, the State did not adopt measures in order to achieve a swift return process and that this situation continued for four years.

326. Consequently, in the light of the foregoing, the Commission considers that the State is responsible for the violation of Article 22 of the American Convention in relation to Articles 11.2, 17.1 and 1.1 to the prejudice of members of the families in the Cacarica communities associated in CAVIDA and the families living in Turbo; and that it is responsible for the violation of Article 22 of the same in relation to Articles 11.2, 17.1, 19 and 1.1 to the prejudice of the children.

### **The Forced Displacement and its Impact on the Displaced Children**

327. From the findings of fact it is apparent that the children suffered the violence of the armed operations leading to their displacement, as well as the consequences of the displacement itself; among other things, via the impact on their living conditions.

328. In this respect, in accordance with the Guiding Principles on Internal Displacement, the Commission takes into consideration that the children have the right to protection and assistance and to treatment required by their status that takes account of their special needs.<sup>344</sup> In the preceding paragraph, on finding the State's responsibility for a violation of the rights of the child for the absence of protection of the family, the Commission emphasized that the overriding interests of the child must be a fundamental consideration in all measures involving the children, and that

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<sup>343</sup> Annex 64. Constitutional Court of Colombia. Annex Order 005-2009. Protection of the Fundamental Rights of the Afro-descendant population victims of forced displacement, in the context of the unconstitutional state of affairs declared in Judgment T-025 de 2004. En: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>344</sup> Annex 91. Principle 4 of the UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. See: <http://www.un-documents.net/gpid.htm>.

they must be recipients of special measures of protection.<sup>345</sup> In this respect, the Court has established that the protective measures the State is obliged to adopt in favor of children vary according to the particular circumstances of the case and their personal condition.<sup>346</sup>

329. In addition, the Court has established that special duties derive from the States' international responsibilities for their general obligations in the context of the American Convention,<sup>347</sup> identifiable as a result of the subject of the right's individual need for protection, or due to his or her personal condition, or from the specific situation they are in,<sup>348</sup> such as extreme poverty, social exclusion or childhood.<sup>349</sup>

330. Specifically, in the special circumstances of the armed conflict in Colombia, it is more evident that children are especially vulnerable, since "they are the least prepared to adapt or respond to this situation and are those who suffer immeasurably from its extremes."<sup>350</sup> Therefore, the Commission has repeatedly pointed out that the special duty of protection incumbent on the State in favor of children comprises both positive and negative obligations.<sup>351</sup>

331. The Court has used specific provisions of the Convention on the Rights of the Child to interpret Article 19 of the American Convention.<sup>352</sup> In this regard, paragraphs 1 and 4 of Article 38 provide that

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

[...]

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

332. The Commission also considers that in the present case, the interpretation of Article 19 of the American Convention must also take into account Additional Protocol II to the Geneva Conventions, by invoking the international *corpus juris* of protection of the child in the context of an armed conflict.<sup>353</sup> In this respect, Article 4 of the said treaty establishes that all necessary care and

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<sup>345</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62.

<sup>346</sup> I/A Court H.R. *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 166.

<sup>347</sup> Cf. I/A Court H.R. *Case of the Pueblo Bello Massacre*, para. 111; *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111, and *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 140.

<sup>348</sup> Cf. I/A Court H.R. *Case of the Pueblo Bello Massacre*, paras. 111 and 112; *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paras. 108 and 110, and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 71.

<sup>349</sup> I/A Court H.R. *Case of the Sawhoyamaxa Community*, Judgment of March 29, 2006. Series C No. 146, para. 154.

<sup>350</sup> I/A Court H.R. *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 246; and *Case of the "Mapiripán Massacre" v. Colombia*. Preliminary Objections. Judgment of March 7, 2005. Series C No. 122, para. 156.

<sup>351</sup> IACHR. Report No. 25/02, Case 11.763, *Massacre of Plan de Sánchez*, February 28, 2002, para. 158.

<sup>352</sup> I/A Court H.R. *Case of "the Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194; see also: *Case of the "Juvenile Reeducation Institute"*, Judgment of September 2, 2004. Series C No. 112, para. 148; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, para. 166.

<sup>353</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 153.

help must be given to the children. In this context, the State has "the obligation to provide children [...] with the necessary assistance and care, to avoid bodily harm, mental trauma and to ensure development as normal as circumstances permit."<sup>354</sup>

333. The Colombian State has recognized, through its Constitutional Court, the differentiated impact caused by displacements in children and adolescents, which is most critical when it affects afrodescendant communities<sup>355</sup>.

334. In the present case, during the armed operations the children suffered from the violence caused by the State and which provoked their forced displacement. In this respect, it should be stressed that Article 37.a of the Convention on the Rights of the Child establishes that States must ensure that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

335. For its part, the Convention on the Rights of the Child provides that children belong to an ethnic minority shall not be denied the right to enjoy their own culture, in common with the other members of the group.<sup>356</sup> Accordingly, the Committee on the Rights of the Child has established that to determine what are the overriding interests of children from minority groups,<sup>357</sup> the State authorities must take into account their cultural rights.<sup>358</sup> This obligation is coupled with the States' duty to provide children with an education designed to teach them their own cultural identity and values,<sup>359</sup> which must continue even in cases of displacement.<sup>360</sup> The Human Rights Committee has also established that if a child belonging to an ethnic minority is placed outside his or her community, the State must adopt special measures so that the child can preserve its cultural identity.<sup>361</sup>

336. Thus the State was obliged to comply with all these provisions before and during the displacement of the Afro-descendant children of Cacarica. However, from the findings of fact it is apparent that many children were in a state of severe malnutrition due to a lack of food, water and other basic services, and that they suffered illness as a result of these living conditions. In this respect, the Ombudsman's census taken in the Turbo dwellings in November 1997 recorded more than 2,000 minors, who were not enjoying either adequate nutrition or sanitation programs given

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<sup>354</sup> CICR. Comments on Additional Protocol II to the Geneva Conventions of 1949. In: [http://www.icrc.org/Web/spa/sitespa0.nsf/html/950B5D7D9CEA18B2C1256E2100501C7D?OpenDocument&Style=Custo\\_Final.3&View=defaultBody10#2](http://www.icrc.org/Web/spa/sitespa0.nsf/html/950B5D7D9CEA18B2C1256E2100501C7D?OpenDocument&Style=Custo_Final.3&View=defaultBody10#2)

<sup>355</sup> Annex 98. Constitutional Court of Colombia Auto 251 of 2008 about the protection of fundamental human rights of children and adolescents displaced by the armed conflict, in the framework of overcoming the unconstitutional state of affairs declared by judgment T-025 of 2004, pp. 13-14.

<sup>356</sup> Art. 30 of the UN Convention on the Rights of the Child, November 20, 1989.

<sup>357</sup> Annex 97. UN Committee on the Rights of the Child, General Comment No. 11, refers to the rights of indigenous children, but also to children of minority groups. "[c]ertain references in this general comment may be relevant for children of minority groups." Indigenous Children and their rights under the Convention, of February 12, 2009, para. 15. At: <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

<sup>358</sup> Annex 97. UN Committee on the Rights of the Child, General Comment No. 11, Indigenous Children and their rights under the Convention, of February 12, 2009, para.31. At: <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

<sup>359</sup> This obligation is contemplated in Article 2 of the Convention on the Rights of the Child.

<sup>360</sup> Annex 90. Principle 23 of the UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. See: <http://www.un-documents.net/gpid.htm>.

<sup>361</sup> Annex 97. UN Committee on the Rights of the Child, General Comment No. 11, Indigenous Children and their rights under the Convention, of February 12, 2009, para. 48. At: <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

the area's lack of sanitary conditions. There is no information on access to educational programs.<sup>362</sup>

337. The Commission observes that the effects of the state of displacement and its consequences on these children constitutes a violation of their rights. In view of the fact that the State failed to adopt measures to prevent the displacement of these children, and to adopt special and individualized measures to protect them and attend to their special needs during the displacement, given their state of great vulnerability,<sup>363</sup> and the differentiated impact caused by forced displacement, the Commission concludes that the State is responsible for the violation of Article 22 of the American Convention in relation to Article 19, to the prejudice of the displaced child members of the Cacarica communities associated with CAVIDA and the children of the women living in Turbo.

### **The Forced Displacement and its Effect on the Property of the Displaced Persons**

338. From the findings of fact it is apparent that the Afro-descendant communities displaced from the Cacarica basin were the victims of bombardments, ransacking and destruction of their homes. These communities were displaced from their territory, and prevented from enjoying their property, lands and the resources of traditional use found there.

339. Article 21 of the American Convention establishes that

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

340. The Inter-American Court has established that among the indigenous peoples there is a communitarian tradition of communal collective ownership of the land, in the sense that ownership is not centered on any one individual but on the group and the community. In this regard, it has established that

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.<sup>364</sup>

341. When applying Article 29 of the American Convention to cases relating to indigenous peoples and tribes, the IACHR has established that the Convention must be interpreted to include principles concerning the collective rights of indigenous peoples.<sup>365</sup> In addition, the right

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<sup>362</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch.IV. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 31. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>363</sup> I/A Court H.R. *Case of "the Street Children" (Villagrán Morales et al.) v. Guatemala*. Preliminary Objections. Judgment of September 11, 1997. Series C No. 32, para. 191.

<sup>364</sup> I/A Court H.R.; *Case of the Mayagna (Sumo) Awas Tingini Community*, Judgment of August 31, 2001. Series C No. 79, para. 149. Cf. *Case of Ivcher Bronstein*, Judgment of February 6, 2001. Series C No. 74, para. 168; *Case of the Constitutional Court*, Judgment of January 31, 2001. Series C No. 71, para. 109; and *Case of Bámaca Velásquez*, Judgment of November 25, 2000. Series C No. 70, para. 210.

<sup>365</sup> IACHR, allegations before the I/A Court H.R in the Case of the Mayagna (Sumo) Community Awas Tingini, referred to in the Judgment of August 31, 2001. Series C No. 79, para. 140(ñ).

to ownership of land has been recognized by the IACHR as one of the rights of indigenous peoples and tribes having a collective aspect.<sup>366</sup>

342. It is based on the collective dimension of the indigenous peoples and tribes that the Commission and Court have recognized that they have a particular relationship with their lands and resources traditionally occupied and used, by virtue of which these lands and resources are considered joint property and enjoyment for the communities, as is the case with the Saramaka tribal peoples.<sup>367</sup>

343. The Court has also established that given the close link between the indigenous peoples and their traditional lands and the natural resources tied to their culture which are found there, these and the intangible elements that emerge from them, must be safeguarded by Article 21 of the American Convention. In this respect, the Court has considered that the term "property" in Article 21, includes "material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movable and immovable, corporeal and incorporeal elements and any other intangible object capable of having value."<sup>368</sup>

344. The Commission observes that the Afro-descendant communities of Cacarica are made up of tribal peoples, as acknowledged by the Constitutional Court of Colombia.<sup>369</sup> These tribal peoples also maintain a close bond with their land, as part of their ancestral tradition, and therefore both their traditional lands as well as their natural resources must be safeguarded by Article 21 of the American Convention, in their collective dimension.

345. The Commission also takes into consideration that Principle 21 of the Guiding Principles requires due respect and guarantees for the right to the displaced population's property.<sup>370</sup>

346. The Commission observes that the legal battles as to registration, use and enjoyment of the ancestral lands of the Cacarica communities prior to the relevant events of the present report have been regulated and brought to the attention of the domestic courts. Without prejudice to the fact that the petitioners have submitted information in this regard as background and contextual events, thus clarifying the situation, the Commission will examine the potential breach of the right to property envisaged in Article 21 of the American Convention, as a result of the violent events and forced displacement which are relevant to the current analysis.

347. In the present case, the displaced persons, as victims of "Operation Genesis" and of paramilitary raids, have seen the exercise of their right to property affected by the bombardments,

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<sup>366</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Community Awas Tingini*, Judgment of August 31, 2001. Series C No. 79, para. 113

<sup>367</sup> I/A Court H.R., *Case of Saramaka v. Surinam*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 2007. Series C No. 172, para. 85. IACHR Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the Toledo District, Belize, October 12, 2004, para. 114. I/A Court HR *Case of the Mayagna (Sumo) Community Awas Tingini*, Judgment of August 31, 2001. Series C No. 79.

<sup>368</sup> I/A Court H.R.; *Case of the Comunidad de Sawhoyamaxa Community*, Judgment of March 29, 2006. Series C No. 146, para. 121. *Cf. Case of the Yakye Axa Indigenous Community*, Judgment of June 17, 2005. Series C No. 125, para. 137; *Case of the Mayagna (Sumo) Community Awas Tingini*, Judgment of August 31, 2001. Series C No. 79, para. 144, and *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para. 122.

<sup>369</sup> Annex 1. Constitutional Court Judgment T-955/2003 of October 17, 2003, p. 7. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

<sup>370</sup> Annex 90. Guiding Principle No.21 of the UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. Principle 4. See:<http://www.un-documents.net/gpid.htm>.

ransacking and destruction of their communities. As an example, in the Bijao hamlet the shops, homes and storerooms were looted; they ransacked food, identity documents, jewellery, clothes and money; outboard motors were destroyed and an electric generator was burnt. Similarly, in Bocas del Limón, the food store of the Women's Committee and two homes were burnt; and community property was looted; and in Puente América, 32 homes were burnt.

348. During the period of displacement until their return to their lands, the displaced persons did not enjoy access to, and use of, personal and community property, lands and natural resources found there. For its part, their right to property was also affected due to the neglect and deterioration of their lands and both their moveable and immovable, community and individual property. Similarly, the forced displacement also disadvantaged them in the possibility for work, which, in turn, caused them loss of earnings. The displaced persons found their right to property affected whenever during the time of the displacement they could not access the right to the use and enjoyment of the natural resources on their traditional lands - such as wood - among other resources traditionally used by members of the Cacarica communities.

349. In this regard, the Commission welcomes the granting of collective title to the lands to the Superior Community Council of Cacarica Black Communities, during the period of displacement, in the formal ceremony in the Turbo Stadium, on December 15, 1999. It also welcomes the help for their return offered by the State and made use of by the displaced when in March 2001, they completed their return to the collective lands. However, throughout the precautionary measures proceedings MC 70/99 - which remain in force up until the date of approval of the present report - the Commission received information on the lack of security in the area, which prevented them from fully exercising their right to property over their lands, resources and goods.

350. The Commission also recalls that the Committee for the Elimination of Racial Discrimination (CERD) has recommended that displaced persons have the right to return freely to their place of origin in conditions of security, and that the State Parties are obliged to guarantee that the return of these displaced persons is voluntary.<sup>371</sup> CERD has also established that "the displaced persons have the right, after returning to the place of origin, to have their property of which they were deprived during the conflict restored to them, and to be duly compensated for the property that could not be returned."<sup>372</sup>

351. Based on Article 1.1 of the Convention, the Inter-American Court has established that members of tribal peoples require various special measures to guarantee the full exercise of their rights, in particular with respect to the enjoyment of their rights to property, in order to guarantee their physical and cultural survival.<sup>373</sup>

352. Therefore, the State must guarantee this special protection. In the present case, the Commission also observes that the State has still not yet established security measures allowing the

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<sup>371</sup> UN Committee on the Elimination of Racial Discrimination (CERD). General Recommendation No. XXII point 2.a and b. At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fed5109c180658d58025651e004e3744?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fed5109c180658d58025651e004e3744?Opendocument).

<sup>372</sup> It has also pointed out that "[a]ll commitments or statements relating to such property made under duress are null and void." UN CERD, General Recommendation No. XXII, point 2.a, b., and c. At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fed5109c180658d58025651e004e3744?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fed5109c180658d58025651e004e3744?Opendocument).

<sup>373</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, Judgment of August 31, 2001. Series C No. 79, paras. 148-149, and 151; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paras.118-121, and 131, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 124, 131, 135-137 and 154, and *Case Saramaka v. Surinam*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 85.

communities which have returned to fully exercise their right to property over their collective territories, over their goods, and resources found there.

353. In view of the exposition above, the Commission concludes that the State is responsible for the violation of the right to free movement and residence due to the forced displacement in relation to the violation of the right to private property, to the prejudice of members of the Cacarica Afro-descendant communities associated in CAVIDA, and the women head of household living in Turbo, in accordance with Article 21, in relation to Article 1.1 of the American Convention.

#### **The Forced Displacement and the State's Obligation to Ensure and Respect Rights Without Discrimination Due to Race, Color or any other Ground**

354. As mentioned before, in the course of its *in loco* visit to Colombia in December 1997, the IACHR received statements evidencing active and passive discrimination by the State and from third parties, and took account of a systematic discrimination, both official and unofficial. In its Third Report, the Commission indicated that "offensive stereotypes in the media, the arts and popular culture tend to perpetuate negative attitudes towards blacks and these often unconscious views are commonly reflected in public policy when governments at all levels distribute limited State resources"<sup>374</sup> and there was a recognition both by the State and society that Afro-Colombians had been victims of racial discrimination."<sup>375</sup>

355. In the current case, before the displacement, the systematic discrimination referred afflicted the Cacarica Afro-descendant communities traditionally settled in the Department of Chocó, an area particularly compromised at the time by the internal armed conflict. During the displacement, the discrimination had an even greater impact on the displaced persons. The Commission recalls that in 2007, the IACHR observed that the Afro-Colombians are particularly affected by the violence caused by the conflict and the scale of violence affecting them remains hidden due to a lack of distinct estimations allowing an appreciation of the ways they are affected in comparison to the rest of the population.<sup>376</sup>

356. Article 1.1 of the American Convention prohibits discrimination of any kind, a concept including unjustified distinctions for reasons of race, color, national or social origin, economic status, birth or any other social condition.

357. For its part, Article 24 of the Convention, which enshrines the right to equality before the law and to receive equal protection of the law, without discrimination, has been interpreted in its reach by the Inter-American Court in the following terms:

The prohibition against discrimination so broadly proclaimed in Article 1.1 with regard to the rights and guarantees enumerated in the Convention thus extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by

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<sup>374</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. XI: The Rights of Black Communities. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 20. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>375</sup> Annex 15. IACHR. Third Report on the Situation of Human Rights in Colombia, Ch. XI: The Rights of Black Communities. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, para. 19. At: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>.

<sup>376</sup> Annex 11. IACHR Preliminary Observations after the visit of the Rapporteur on the Rights of Afro-descendants and Against Racial Discrimination to the Republic of Colombia, para. 79 In: <http://www.cidh.org/countryrep/ColombiaAfrodescendientes.sp/ColombiaAfros2009cap3-4.sp.htm#1>.

acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations.<sup>377</sup>

358. In this respect, the Inter-American has stressed that "[n]on-discrimination, together with equality before the law and equal protection of the law, are elements of a general basic principle related to the protection of human rights."<sup>378</sup>

359. As regards the contents of the concept of equality, the Inter-American Court has explained that this springs directly from the single nature of the human family and it is inseparable from the essential dignity of the individual in regard to which any situation is impermissible which considers a certain group as being inferior, leads to treating them with hostility or in any other way discriminates against them in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.<sup>379</sup> On the principle of equality reposes the judicial framework of national and international public policy and that permeates all laws.<sup>380</sup> This principle is a rule of *jus cogens*.<sup>381</sup>

360. The Commission will analyze the possible discrimination against the displaced Afro-descendants, the victims in the present case. In this sense, the IACHR reiterates (see above IV C.1.) that it considers it necessary to give a broad interpretation to the rights of the American Convention based on other relevant international instruments, by virtue of the clause set out in Article 29.b, which allows a fuller characterization of the events.

361. A special manifestation of the right to equality is the right of everyone not to be a victim of racial discrimination. This type of discrimination constitutes an attack on the equality and essential dignity of all human beings and has been the object of unanimous condemnation by the international community,<sup>382</sup> as well as by an express prohibition in Article 1.1 of the American Convention.

362. In this respect, the IACHR recalls that both the UN's International Covenant on Civil and Political Rights (hereinafter ICCPR),<sup>383</sup> as well as the Inter-American Democratic Charter,<sup>384</sup> and

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<sup>377</sup> I/A Court H.R. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion, OC-4/84 of January 19, 1984. Series A No. 4, para. 54. In the same sense, see IACHR, Report No. 40/04, *Indigenous Maya Communities in the Toledo District v Belize*, October 12, 2004, paras.162 et seq.

<sup>378</sup> I/A Court H.R. *Judicial Condition and Rights of the Undocumented Migrants*, Advisory Opinion, OC-18/03 of September 17, 2003, Series A. No. 18, para. 83. The Human Rights Committee has established in the identical sense that "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights." Annex 100. Human Rights Committee, General Comment No. 18: Non-Discrimination, November 11, 1989, para. 1. At: <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>.

<sup>379</sup> I/A Court H.R., Advisory Opinion OC-4/84 of January 19, 1984: *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Series A No. 4, para. 55.

<sup>380</sup> Cf. I/A Court H.R. *Legal Status and Rights of Undocumented Migrants*, Advisory Opinion OC 18/03, para. 101. Cf. I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, paras. 184-185.

<sup>381</sup> I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 184.

<sup>382</sup> See, *inter alia*, Annex 101. UN Declaration on the Elimination of All Forms of Racial Discrimination of November 20, 1963, [Resolution 1904 (XVIII)] of the General Assembly] which solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person. At: <http://www.un-documents.net/a18r1904.htm>.

<sup>383</sup> The ICCPR establishes in its Article 2.1 the obligation of each State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without any distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the same respect, para. 5 of General Comment No.17 (of April 7, 1989) of the UN Human Rights Committee, relating to

the American Declaration of the Rights and Duties of Man,<sup>385</sup> contain specific provisions regarding racial and ethnic discrimination; the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "Convention on Racial Discrimination") - to which Colombia is a Party<sup>386</sup> - define discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."<sup>387</sup>

363. In its General Commentary XX, CERD has established that the principle of enjoying human rights on the basis of equality is fundamental to the prohibition of discrimination in the Convention on Racial Discrimination based on race, color, descent, nationality or ethnic origin. It indicated that the reasons for discrimination are understood in practice by the notion of "intersection" in which "the Committee refers to situations of double or multiple discrimination based on origin or religion - when the discrimination appears to exist in combination with another cause or causes listed in Article 1 of the Convention."<sup>388</sup>

364. Similarly, CERD has established that the term "non-discrimination" does not mean the necessity of uniform treatment when there are significant differences in the situations between one person and another or one group or another, or in other words, if there is an objective and reasonable justification for treating them differently. It indicated that to treat persons or groups whose situation is objectively different in the same way would constitute 'effective' discrimination, just as it would for unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the principle of non-discrimination requires that the groups' characteristics be taken into consideration.<sup>389</sup>

365. The Committee for Economic, Social and Cultural Rights, for its part, has indicated that the fact that a person belongs to a group characterized by one of the prohibited reasons for discrimination frequently influences the effective enjoyment of the rights recognized in the Covenant

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Article 24 of the International Covenant on Civil and Political Rights, which recognizes the rights of the child establishes as follows: "the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock."

<sup>384</sup> The Preamble to the Inter-American Democratic Charter stresses that the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights contain the values and principles of liberty, equality, and social justice that are intrinsic to democracy. For its part, Article 9 of the Charter establishes that: "[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation."

<sup>385</sup> The American Declaration of the Rights and Duties of Man stresses in its preamble that "[a]ll men are born free and equal, in dignity and in rights", and it Article II establishes that "all persons are equal before the law and have the rights and duties established in this declaration as to race, sex, language, creed or any other factor."

<sup>386</sup> Colombia ratified the International Convention on the Elimination of All Forms of Racial Discrimination on September 2, 1981.

<sup>387</sup> Art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>388</sup> Annex 102. UN. CERD. General Recommendation No. 32, para.7. At: <http://www2.ohchr.org/english/bodies/cerd/comments.htm>.

<sup>389</sup> Annex 102. UN. CERD. General Observation No. 32, para. 8. At: <http://www2.ohchr.org/english/bodies/cerd/comments.htm>.

on Economic, Social and Cultural Rights.<sup>390</sup> It recommended that to eliminate discrimination in practice, the State must pay sufficient attention to the groups who have suffered abuse historically or who are victims of persistent prejudice, instead of simply comparing the formal treatment received by persons in similar situations. It stressed that the States Parties must immediately adopt the necessary measures to prevent, reduce or eradicate the conditions and attitudes that generate or perpetuate substantive or *de facto* discrimination.<sup>391</sup> It maintained that to eradicate substantive discrimination the States Parties may adopt special measures of a temporary nature, establishing precise differences based on the prohibited reasons for discrimination. These measures are lawful as long as they adopt a reasonable, objective and proportional form to fight *de facto* discrimination, and cease to apply once a sustainable substantive equality is achieved.<sup>392</sup>

366. Similarly, the 169 ILO Convention on Indigenous and Tribal Peoples in Independent Countries - to which Colombia is a party<sup>393</sup> - also enshrines various clauses which protect the cultural integrity of these peoples. Thus, this Convention provides that "[g]overnments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity...", action which shall include measures for "promoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;" (Article 2); that "[s]pecial measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures and environment of the peoples concerned..." (Article 4); that in applying the provisions of this Convention "the social, cultural, religious and spiritual values and practices of these peoples shall be recognised, and due account shall be taken of the nature of the problems which face them both as groups and as individuals" and also "the integrity of the values, practices and institutions of these people shall be respected" (Article 5); and that "[t]hese peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle." (Article 8.2).

367. The Constitutional Court of Colombia, for its part, has stressed that the international community has recognized ethnic groups as distinguishable collectives, especially since the Indigenous and Tribal Peoples Convention, ILO 169, "in terms of its provisions permit the clear assertion of the right of Afro-Colombian communities to be accepted as 'peoples', attending the social, cultural and economic conditions which distinguish them from other sectors of the national collective, coupled with being governed by their customs and traditions, and count on their own laws [...]".<sup>394</sup> The Constitutional Court has also recognized the state of historical marginalization and segregation facing Afro-Colombians, and has emphasized the need to adopt positive differentiation measures, which will serve their special conditions of vulnerability and defenselessness, and, through preferential treatment, will tend to ensure the effective enjoyment of

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<sup>390</sup> Colombia ratified the International Covenant on Social, Economic and Cultural Rights, on October 29, 1969.

<sup>391</sup> Annex 103. UN Committee on Economic, Cultural and Social Rights, General Observation No. 20, para. 8.b. At: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

<sup>392</sup> UN Committee on Economic, Cultural and Social Rights. General Observation No. 20, para. 9. At: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>. Cf. Annex 104. UN Committee on the Elimination of All Forms of Discrimination against Women. General Observation No. 28, para. 18. At: <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>. Colombia ratified the Convention on the Elimination of All Forms of Discrimination against Women on January 19, 1982.

<sup>393</sup> Ratified by Colombia on August 7, 1991. Approved by Law 121 of 1991.

<sup>394</sup> Annex 1. Constitutional Court. Judgment T-995/2003 of October 17, 2003, p. 76. Annex 15 to the petitioners' allegations on the merits received on March 10, 2008.

their rights, which the Afro-Colombians must enjoy not only as individuals but as communities to which they belong.<sup>395</sup>

368. Thus, in the light of applicable international law fully recognized by Colombian domestic law, the Afro-Colombians have the fundamental right not be victims of discrimination because of their racial or ethnic origin, and the State of Colombia must abstain from committing racially discriminatory acts, must prohibit the commission of discriminatory acts and must adopt positive measures to combat discrimination.

369. The United Nations Guiding Principles of Internal Displacement --which apply regardless of race, color, or any other kind, national, ethnic or social origin, or other similar criterion- - *inter alia*<sup>396</sup> prohibit arbitrary displacements, including those undertaken with the object or result either of a change in ethnic or racial make-up of the population concerned;<sup>397</sup> and establish the specific obligation of the States to take protective measures against the displacement of minorities or other groups living through an especial dependency with their land or a particular attachment to it.<sup>398</sup>

370. With respect to displaced persons, the Inter-American Court has established that to comply with the obligation of non-discrimination, the States must refrain from taking action that in any way is designed directly or indirectly to create situations of discrimination *de jure* or *de facto*, as well as to adopt positive measures to reverse or change current discriminatory situations in their countries. This implies a special duty of protection on the part of the State with respect to the actions and practices of third parties which, through tolerance or acquiescence, create, perpetuate or favor discriminatory situations,<sup>399</sup> and that the differentiated situation the displaced persons are in requires the States to grant special treatment in their favor and to adopt measures of a positive character to reverse the effects of their said condition of weakness, vulnerability and defenselessness, including *vis-à-vis* the actions and practices of individual third parties.

371. Finally, with respect to the Afro-descendant women victims of the displacement, and within this, that of the women head of household living in Turbo, the Commission takes into consideration the disproportionate impact of their change of roles and family structures. In this respect, the Commission has established that among the most tangible consequences on these women have been: (i) the change in the dynamic of family and spousal roles and in the responsibilities caused by the death or loss of a spouse or partner, (ii) the physical and psychological trauma produced by violent acts and the threats suffered, (iii) the necessity for social and economic adaptation to a new community and its potential rejection of them; changes generally associated

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<sup>395</sup> Annex 21. Constitutional Court Judgment T-025/04 of January 22, 2004. At: <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm>. Cf. Annex 62. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. See: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>396</sup> Annex 90. UN Guiding Principles on Internal Displacement, E/CN.4/ 1998/53/Add.2 of February 11, 1998. Principle 4. At: <http://www.un-documents.net/gpid.htm>.

<sup>397</sup> Annex 90. UN Guiding Principles on Internal Displacement, E/CN.4/ 1998/53/Add.2 of February 11, 1998. Principle 6. At: <http://www.un-documents.net/gpid.htm>.

<sup>398</sup> Annex 90. UN Guiding Principles on Internal Displacement, E/CN.4/ 1998/53/Add.2 of February 11, 1998. Principle 9. At: <http://www.un-documents.net/gpid.htm>.

<sup>399</sup> Cf. I/A Court H.R. *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 178.

with the necessity of guaranteeing basic family needs and that the opportunities these women had to achieve this.<sup>400</sup>

372. In Order 005-2009, the Constitutional Court recognized the disproportionate impact, in quantitative and qualitative terms, of the internal forced displacement on the Afro-Colombian communities, and on the protection of their individual and collective rights; that a disproportionate impact was mainly suffered by children, women, the disabled, senior citizens, and members of communities; and on the possibility for Afro-Colombian cultural survival.<sup>401</sup>

373. In the same way, in order 092 of 2008, the Constitutional Court recognized that the situation of women displaced by the armed conflict constitutes one of the most serious forms of the unconstitutional state of affairs declared by judgment T-025 of 2004. Their rights are being violated in a systematic, prolonged and massive way throughout the country and that the State's response to this situation has been patently insufficient to address its constitutional duties. Similarly, it declared that the authorities at every level were under an international and constitutional obligation to act determinedly to prevent the disproportionate impact of the displacement on women.<sup>402</sup>

374. For its part, the Constitutional Court has also recognized that the international agreements of the State of Colombia in matters of Human Rights and International Humanitarian Law, also require the authorities to adopt a preventive approach to forced displacement which should be sufficiently differentiated and specific as to have a bearing on the fundamental causes of this phenomenon and its disproportionate impact on the Afro-descendant communities and their members.<sup>403</sup> In this respect, the Court considered that in Colombia the structural nature of the problem has not been acknowledged and the State's response is not systematic or comprehensive. It pointed out that public policy lacks a specific preventive approach to the actual causes of the disproportionate impact of forced displacement on the Afro-descendant population, and it referred to the actual case of the Cacarica basin.<sup>404</sup> It also recognized that the State had not incorporated the differentiated approach that duly appreciates the special needs of the displaced Afro-descendants

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<sup>400</sup> Annex 105. IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II.Doc. 67, October 18, 2006, para. 76. Cited: UN Fund for the Development of Women, *Report on the Situation of Women in Colombia*, September 2005, p. 22 and *Colombian Women in Search of Peace: Close Analysis of their Initiatives and Proposals*, 2004, pp. 23-24. At: <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

<sup>401</sup> The Constitutional Court considered that the forced displacement and loss of ancestral lands caused by the violence of illegal armed actors or from the same social and economic conditions, placed these populations in situations which diminished their cultural identity, heightened their situation of equality, marginalization and finally a violation of the individual, economic, social, cultural and collective rights. To the trauma itself of the displacement crisis, can be added the uncertainty of having to integrate into a social, spatial and cultural area different from what they majority were used to and which generally rejected them due to their racial origin. Constitutional Court. Annex 62. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>402</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>. Annex 92. Constitutional Court. Order No. 092 of April 14, 2008 on the protection of the fundamental rights of women victim of displacement caused by the armed conflict. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2008/A092-08.htm>.

<sup>403</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>404</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

and that the attention to this population was limited to the programs and policies for the displaced population in general, with the added complication that the Afro-descendant population is the most marginalized within the attention given to displaced persons.<sup>405</sup>

375. The Constitutional Court established that the lack of an integral approach that considers the structural factors which feed back into the conflict and the problems facing the Afro-Colombian population prevent the measures adopted to avoid displacement from meeting the risks confronting the Afro-Colombian population; facilitate the implementation of contingency plans when the danger is related to the State's lawful operations to maintain public order; and they permit the adoption of appropriate preventive measures to guarantee the right to life and to prevent their uprooting and confinement.<sup>406</sup>

376. Finally, the Commission recalls that the Constitutional Court has established that in Colombia, a combination of the disproportionate effects of the internal armed conflict, the war on drugs, the advance of mega-projects and the adoption of legislation affecting the territorial and environmental rights of the Afro-Colombian communities, is causing conditions such as to dispossess them of their territorial property and from their environmental habitat, so that the inequality gap is thus maintained, consolidated and deepened.<sup>407</sup>

377. Within these parameters, the Commission will turn to consider whether the events described involve the responsibility of the State with regard to its obligation to guarantee respect for rights without any discrimination, and for the right to equality before the law.

378. In the case under consideration, the Commission has already commented on the failure to adopt preventive and protective measures for the Cacarica Afro-descendant communities who were the victims of forced displacement. Similarly, the State failed to comply with its international obligations to provide protection for a group at high risk of a human rights violation and that are the subject of special protection. This lack of State protection, as well as being discriminatory, constitutes a failure of the State's duty to protect and respect the socio-cultural integrity of the Afro-descendant communities.<sup>408</sup> Finally, the lack of differentiated care for the displaced due to their more vulnerable condition also constitutes a failure in the international obligations assumed by the State.

379. It is appropriate to reemphasize that the group of victims in the present case is made up of 446 displaced Afro-descendant victims of the armed conflict, of whom 117 are children, 195 are women and one group are women head of household. In this sense, the notion of intersectionality applies to this group of victims, in view of the fact they suffer from many kinds of discrimination from a combination of causes, among which are: their displaced status, their gender, ethnicity and status as children.

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<sup>405</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>406</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>407</sup> Annex 62. Constitutional Court. Order 005-2009. Protection of fundamental rights of the Afro-descendant population victims of forced displacement, in the framework of the unconstitutional state of affairs declared in Judgment T-025 of 2004. At: <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A005-09.htm>.

<sup>408</sup> Cf. IACHR Report No.176/10 (Segundo Aniceto Norin Catrیمان, Juan Patricio Marileo Saravia, Víctor Ancalaf Llaupе et al.) of November 5, 2010, para. 218.

380. With regard to the women head of household, UNIFEM confirms that the change in roles and responsibilities caused by the displacement are inextricably linked to the need to guarantee the basic necessities of the families and to the opportunities there are to achieve it.<sup>409</sup> The Commission has stressed that forced by the circumstances, the displaced women have had to assume responsibility for the economic welfare of their families, to learn to acknowledge and solve their own problems in the world at large. They must turn to the various State and private agencies to arrange the humanitarian assistance set out in the legislation referring to internal forced displacement, to participate in various organizations to claim their rights and to manage different and complex spatial and cultural references in comparison to those from their place of origin.<sup>410</sup>

381. Consequently, the Commission concludes that the State is responsible for the violation of its obligation to guarantee and respect the rights without any discrimination on grounds of race or color and the right to equal protection before the law, by reason of the breaches caused by "Operation Genesis", the paramilitary raids, and the subsequent forced displacement suffered by the Afro-descendant communities of Cacarica associated in CAVIDA, and by the women head of household living in Turbo, in conformity with Article 22 in relation to Articles 1.1 and 24 of the American Convention.

382. From a combined reading of the context, background and events in the present case, the Commission reiterates the existence of a systematic pattern of these types of operations in the region at the time relevant to the events. In this respect, it is appropriate to stress that the forced movement of a population is characterized as a crime against humanity in Article 7.1.d of the Statute of the International Criminal Court (hereinafter ICC), whenever it is committed as part of a widespread or systematic practice against members of a civilian population and with knowledge of this said attack. Its Article 7.2.d defines that: "[d]eportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".<sup>411</sup> For its part, the ICCFY has considered the forcible transfer of persons a crime against humanity under the criminal conduct "other inhuman acts" set out in Article 5.1 of its Statute. This Tribunal has defined deportation or forcible transfer of civilians as "the forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".<sup>412</sup>

383. Finally, as recognized by the Constitutional Court, displacement in Colombia represents a massive, prolonged and systematic violation. Similarly, the Commission reiterates (see supra IV C.3) the existence of a generalized and systematic pattern of forced displacement under analysis. Therefore, it concludes that the forced displacement suffered by the Cacarica Afro-

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<sup>409</sup> Annex 105. IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II.Doc. 67, October 18, 2006, para. 76. Cites: UN Fund for the Development of Women, *Report on the Situation of Women in Colombia*, September 2005, p. 22 and *Colombian Women in Search of Peace: Close Analysis of their Initiatives and Proposals*, 2004, pp. 23-24. At: <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

<sup>410</sup> Annex 105. IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II.Doc. 67, October 18, 2006, para. 76. At: <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

<sup>411</sup> Rome Statute of the ICC, approved on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, A/CONF.183/9.

<sup>412</sup> Annex 106. ICTY. Judgment of the First Instance Chamber, Blaskic Case, March 3, 2000, para. 234. At: <http://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>. "Traditionally, the distinction between forcible transfer and deportation is that the first one consists of forced displacements of individuals within state borders, with the second one consists of forced displacement beyond internationally recognised state borders". Annex 107. ICTY, Judgment of the First Instance Chamber, Case of Blagojevic and Jokic, of January 17, 2005, para. 595. At: [http://www.icty.org/x/cases/blagojevic\\_jokic/tjug/en/bla-050117e.pdf](http://www.icty.org/x/cases/blagojevic_jokic/tjug/en/bla-050117e.pdf).

descendant communities represented a systematic violation against members of the Cacarica Afro-descendant communities, and therefore a crime against humanity.

**6. Judicial Guarantees and Judicial Protection for the Members of CAVIDA, the Women Head of Household living in Turbo and the Family of Marino López (Arts. 8 and 25 of the ACHR in relation to Art. 1.1 and to Arts. 1, 6 and 8 of the Convention to Prevent and Punish Torture)**

384. The Commission is including in the present report an analysis of Article 6 of the Inter-American Convention to Prevent and Punish Torture, as it bears a connection with allegations relating to Articles 1 and 8, and with Articles 8 and 25 of the American Convention, included at the admissibility stage.

385. Article 8.1 of the American Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor fiscal, or any other nature.

386. Article 25.1 of the Convention establishes that

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court of tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties

387. In determining a possible violation of Article 8 of the Convention, it is necessary to examine whether the procedural guarantees of the party affected were respected in the judicial proceedings.<sup>413</sup> Any obstruction of justice, impediment or lack of assistance by the authorities which have impeded or currently impede the clarification of the case, constitute a violation of Article 1.1 of the Convention.

388. For its part, Article 25.1 of the American Convention embodies the principle of the effectiveness of instruments or procedural means designed to guarantee human rights.<sup>414</sup>

389. As the Inter-American Court has emphasized, Articles 8, 25 and 1.1 are mutually reinforcing:

Article 25 in relation to Article 1.1 of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered...Article 25 'is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention". That article is closely linked to Article 8.1, which provides that every person has the right to a hearing, with due guarantees and

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<sup>413</sup> I/A Court H.R., *Case of Genie Lacayo*. Judgment of January 29, 1997. Series C No. 30, para. 74.

<sup>414</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.<sup>415</sup>

390. Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture provide:

Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6 [...] The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. [...] Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. [...] After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

391. These rules establish the State's obligation to ensure the enjoyment of the judicial guarantees within a reasonable time and the general obligation to provide an effective judicial remedy for a violation of human rights, also derived from Article 1.1 of the Convention.<sup>416</sup> It is now appropriate to examine whether the activities undertaken by the State organs in order to judicially clarify the events and to administer justice satisfy the standards established in the American Convention.

392. As it appears from the findings of fact both in the investigation started in 1997 which lead to proceedings No. 2332 for the paramilitary raid into Bijao, the murder of Marino López, the forced displacement and conspiracy to commit crimes, against General Del Río Rojas and two paramilitaries, as well as the investigation initiated against another three paramilitaries for the same criminal offenses, are still pending. In this process, Emedelia Palacios appears as a *partie civile*.

393. Similarly, in January 1999, investigation No. 5767 (426) was begun against General Del Río Rojas for his alleged collaboration with paramilitary groups and this said trial is based on the confession of former soldier Oswaldo De Jesús Giraldo Yepes. In July 2001, the arrest of the General was ordered and carried out; he was then released in August of the same year. Shortly afterwards, the nullity and reopening of the investigation was ordered. In 2002, soldier Giraldo Yepes withdrew his testimony due to death threats and a lack of protection for him and his family. In December 2004, the investigation was closed. More than four years later, in February 2009, the Supreme Court ordered the reopening of the investigation under No. 426 in response to the request for review lodged by the Procurator General of the Nation. This investigation is still at the instruction stage. In 2001, a *partie civil* suit filed by the petitioners' representative was

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<sup>415</sup> I/A Court H.R., *Case of Loayza Tamayo. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 169.

<sup>416</sup> As the Inter-American Court of Human Rights has pointed out "Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, 'Article 25 is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention'. I/A Court H.R., *Case of Loayza Tamayo. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 169.

rejected, after which he filed a *tutela* before the Supreme Court, which was dismissed. Subsequently, the Constitutional Court ordered the admission of this claim.

394. In the first place, the Commission observes that the only criminal investigation initiated was that relating to the paramilitary raid on the Bijao hamlet. There were no investigations in that jurisdiction regarding the other paramilitary raids relevant to the present case. The remaining raids are allegedly being considered in the context of the Justice and Peace Law proceedings, to the extent of their being mentioned in the voluntary statements rendered.

395. In the context of the Justice and Peace Law proceedings, initiated over five years ago, of seven demobilized individuals who claimed to have participated in the events of the present case, five have been placed on bail and their trials are still pending.

396. As regards the State's allegation with respect to the petitioners' lack of participation in the reparations proceedings contemplated in the Justice and Peace Law, the Commission has already stressed that the victim's right to demand a reparation from the perpetrator is unrelated to the claim of reparations from the State, since it deals with different credits, aims and passive subjects.<sup>417</sup>

397. The Commission also observes that in the first stage of investigation No. 5767, the officials of the UDH and the CTI participating in General Del Río Rojas' arrest were subject to pressures and the Head of the UDH was asked to tender his resignation. In this respect, as established in Admissibility Report No. 86/06,<sup>418</sup> the acts and omissions of the judicial organs when determining the criminal responsibility of State agents was a matter of concern for the IACHR through precautionary measures 185-01 issued in order to protect the physical integrity of the officials of the UDH and members of the CTI involved in the investigation and prevent reprisals against them for the lawful exercise of their functions. Through these precautionary measures the Commission followed-up on the threats and the risk that these officials were subjected to,<sup>419</sup> which constituted an obstruction to advancing the investigation and an impediment to the determination of truth and the punishment of the perpetrators.

398. For its part, the Commission notes that former soldier Giraldo Yepes requested protection for himself and his family in order to continue with his depositions in the criminal and disciplinary proceedings, due to the threats to which he was subjected. The former soldier withdrew his initial incriminating statements, in view of the lack of protection.

399. In this respect, the Commission recalls that the Court has considered that "the State, in order to guarantee due process, must ensure all the measures necessary to protect the judicial staff, investigators, witnesses and family members of the victims from harassment and threats which are

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<sup>417</sup> Annex 96. IACHR *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008, para. 6. At: <http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf>.

<sup>418</sup> IACHR, Report No.86/06, Petition 499-04, Admissibility, Marino López et al. (Operation Genesis) Colombia, October 21, 2006, para. 58.

<sup>419</sup> Annex 68. MC 185-01. *Pedro Díaz Romero et al.* IACHR. Annex 66. See IACHR Press Release No. 21/01. IACHR's Concern at Changes in the National Human Rights Unit in Colombia. At: <http://www.cidh.org/Comunicados/English/2001/Press21-01.htm>.

aimed at delaying the trial and avoiding a clarification of the events and shielding those responsible for them." <sup>420</sup>

400. For its part, the Commission observes that at least 38 members of the Army<sup>421</sup> participated in "Operation Genesis" and a large number of members of paramilitary groups took part in the raids, but only one soldier and one Army General and a few members of paramilitary groups have been prosecuted. The rest have not been connected with the investigations.<sup>422</sup>

401. The Commission observes that more than 14 years after the events occurred, one of the proceedings is still at the investigation stage, and that neither the criminal case nor the investigations in both the ordinary courts and in the framework of the Justice and Peace Law have produced any results whatsoever, in terms of the administration of justice or offering reparations; neither have any convictions been issued against those confessing that they took part in the events of the present case, and therefore the perpetrators have not been duly punished.

402. The judicial proceedings undertaken have been delayed, therefore the reasonable time for the investigation as established in the Convention has been exceeded and the responsibility is attributable to the judicial authorities. In this regard, as a general rule, a criminal investigation must be conducted promptly to protect the victims' interests, to preserve evidence and also to safeguard the rights of everyone who might be considered a suspect in the context of the investigation. In the present case, the delays have reduced the possibility of uncovering the truth into the events and of trying the perpetrators. Consequently, those responsible for harming civilians caused by "Operation Genesis", the paramilitary raids, the acts of torture, the death of Marino López, and the forced displacement of the Cacarica communities continue to go unpunished.

403. In this sense, the Commission has expressed the view that - given that this violation forms part of a pattern of the State's ineffectiveness in trying and punishing the attackers - not only has the obligation to try and punish been breached, but also that of preventing such practices. This general lack of judicial effectiveness creates an atmosphere which encourages violence, without effectiveness in the State's role as a representative of society to punish these acts.<sup>423</sup>

404. As the Commission has established, the lack of effectiveness in the dismantling of the paramilitary structures is evident, *inter alia*, from an analysis of the number of violations of human rights perpetrated by paramilitaries at the time of the events and in subsequent years, acting by themselves or in concert or collaboration with State agents, *vis-à-vis* the high incidence of impunity these events remain in, as has happened in the present case, which occurred more than fourteen years after the events took place.<sup>424</sup> Both the Inter-American Commission as well as the United Nations High Commissioner for Human Rights<sup>425</sup> have consistently commented on the high

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<sup>420</sup> I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 199.

<sup>421</sup> Annex 108. Colombian Military Forces, National Army, Patrol Report of March 20, 1997, Annex 1 Personnel who participated in and played an important role in Operation "Genesis". Annex 1 to the initial petition received on June 1, 2004.

<sup>422</sup> Cf. I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 240.

<sup>423</sup> IACHR. Report N° 54/01 *Maria Da Penha Maia Fernandes*, April 16, 2001, para. 54. Report No. 75/06 Jesús María Valle Jaramillo of October 16, 2006, para. 75.

<sup>424</sup> IACHR Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 68.

<sup>425</sup> Cf., Annex 84. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005, para. 92; See: [http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004\\_eng.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004_eng.pdf); Annex 85. Report of the

incidence of impunity for human rights violations committed in consequence of criminal trials and disciplinary investigations opened against members of the Security Forces and paramilitaries which do not result either in establishing those responsible or in appropriate punishment. The Inter-American Court has defined impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention."<sup>426</sup>

405. The impunity for this violence -- such as for Marino López's death -- impacts on the search for the truth by members of his family and the displaced persons. The Inter-American Court has ruled on the right of the victims or their families to find out what happened and has established that the right to truth is included in their right to obtain clarification of the events from the competent organs of the State and the corresponding responsibilities, through an investigation and trial, in accordance with the rules set out in Articles 8 and 25 of the Convention.<sup>427</sup> The right to truth forms an important part of the reparation for the victim's family and gives rise to an expectation that the State must satisfy.<sup>428</sup>

406. Similarly, the Inter-American Court has ruled that impunity fosters a repetition of human rights violations.<sup>429</sup> In this sense, the impunity for the events under analysis affects members of 23 displaced communities, who were the target of threats and acts against their security and personal integrity. In effect, the participation of State agents in the planning and execution - without having adopted preventive and protective measures in favor of the civilian

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...continuation

UNHCHR on the situation of human rights in Colombia, E/CN.4/2004/13, of February 17, 2004, paras. 26, 27, 28 and 77; See: [www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003\\_eng.pdf](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003_eng.pdf); Annex 86. Report of the UNHCHR on the situation of human rights in the year 2002, E/CN.4/2003/13, February 24, 2003, para. 77; See: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/1304674285b7eb3bc1256cf5003906fb?Opendocument>; Annex 87. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2002/17, February 28, 2002, paras. 211, 212 and 365; See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/111/15/PDF/G0211115.pdf?OpenElement>; Annex 88. Report of the UNHCHR on the situation of human rights in Colombia in the year 2000, E/CN.4/2001/15, March 20, 2001, paras. 57, 142, 206 and 254. See: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html); and Annex 89. Report of the UNHCHR on the situation of human rights in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 27, 47, 146 and 173. See: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html). IACHR Report No. 75/06 *Jesús María Valle Jaramillo* of October 16, 2006, para. 68.

<sup>426</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 237; and *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 203; and *Case of the Serrano Cruz Brothers*. Judgment of March 1, 2005. Series C No. 120, para. 170. Cf. IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 138.

<sup>427</sup> I/A Court H.R. *Case of Barrios Altos*. Judgment of March 14, 2001. Series C No. 75, para. 48. *Case of Bámaca Vélasquez*. Judgment of November 25, 2000. Series C No. 70, para. 201. *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 62 and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 148 and *Case of Myrna Mack Chang*, Judgment of November 25, 2003, paras. 217 and 218, and IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 140.

<sup>428</sup> I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 78 and *Case of the Serrano Cruz Brothers*. Judgment of March 1, 2005. Series C No. 120, para. 62, and IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 140.

<sup>429</sup> I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 168; *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 266; *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 237; *Case Paniagua Morales et al.*, Judgment of March 8, 1998, para. 173, and IACHR Report No. 62/08 *Manuel Cepeda Vargas*, para. 141.

population - in such a generalized and systematic attack against a group constitutes a crime against humanity.<sup>430</sup>

407. Finally, as regards the displacement, the Commission has already established that the freedom of movement and residence for the members of the displaced communities was limited by a *de facto* restriction caused by the fear of acts of violence, including the murder of Marino López and the threats suffered by the victims before and after the displacement (see supra IV.C.5). The fact that the State did not undertake a prompt criminal investigation to put an end to the impunity, among other things, kept the displaced persons away from their ancestral lands and impeded the return of all the displaced.<sup>431</sup>

408. Based on the foregoing considerations, the Commission concludes that the State has not provided the necessary measures to comply with its obligation to investigate, try and punish all those responsible for the human rights violations examined in the present report, in conformity with Articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 of the same treaty, to the prejudice of Marino López's immediate family, the Cacarica Afro-descendant communities associated in CAVIDA, and the women head of household living in Turbo. Similarly, it concludes that the State has not implemented the necessary measures to comply with its obligation to investigate, try and punish those responsible for the acts of torture committed against Marino López, in conformity with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the prejudice of Marino López.

## V. CONCLUSIONS

409. Based on the considerations of fact and law contained in the present report, the Commission concludes as follows:

1. The counter-guerilla military operation known as "Operation Genesis" which was planned by agents of the State of Colombia and undertaken jointly with paramilitary groups, was executed without the State's adoption of appropriate preventive and protective measures for the civilian population. The indiscriminate bombarding of "Operation Genesis" and the paramilitary raids - in the course of which Marino López was tortured and murdered - affected the Afro-descendant communities of the Cacarica river basin, and caused their forced displacement. These events which form part of a pattern of massive, systematic and generalized violence were undertaken in the context of the armed conflict in Colombia, in violation of the human rights of the Afro-descendant communities in the Cacarica basin associated in CAVIDA, and of the women head of household living in Turbo, and therefore constitutes a crime against humanity.

2. The State of Colombia has not investigated the human rights violations committed either against Marino López, the members of the Afro-descendant communities of the Cacarca basin associated in CAVIDA, or against the women head of household living in Turbo in a speedy and efficient manner, nor has it examined the numerous violations committed during "Operation Genesis", the paramilitary raids, or the violations occurring as a result of these, and the forced displacement they caused. In this sense, the Commission concludes that the courts have acted

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<sup>430</sup> Cf. I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 96, and IACHR Report No. 62/08 Manuel Cepeda Vargas, para. 141.

<sup>431</sup> Cf. *Case of the Moiwana Community*, June 15, 2005. Series C No. 124, paras. 107 to 121; See in the same sense *Case of Ricardo Canese*, Judgment of August 31, 2004. Series C No. 111, paras. 113 to 120 and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 170.

with a lack of diligence in promoting the criminal trials aimed at clarifying the acts of violence and at punishing all the perpetrators.

4. Finally, the Commission concludes that the human rights violations produced during "Operation Genesis", the paramilitary raids and their aftermath still remain in impunity.

5. In light of the above, the State of Colombia is responsible for the violation of rights, set out in the following Articles of the American Convention:

a) Articles 4 and 5 of the American Convention, in relation to Article 1.1 to the prejudice of Marino López, and Article 5 to the prejudice of his immediate family;

b) Article 5 of the American Convention, in relation to Article 1.1 to the prejudice of the members of the Cacarica communities associated in CAVIDA, and the women head of household living in Turbo, and also in relation to Article 19, to the prejudice of their children and Marino López's children;

c) Article 22 of the American Convention, in relation to Articles 1.1, 5, 11, 17, 19, 21, and 24 to the prejudice of members of the Cacarica Afro-descendant communities associated in CAVIDA, and the women head of household living in Turbo, and also in relation to Article 19, to the prejudice of their children;

d) Articles 8 and 25 of the American Convention, in relation to Article 1.1 and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the prejudice of Marino López's immediate family;

e) Articles 8 and 25 of the American Convention, in relation to Article 1.1, to the prejudice of the members of the Cacarica communities associated in CAVIDA and the women head of household living in Turbo.

## **VI. RECOMMENDATIONS**

410. Based on the arguments of fact and law hereinbefore expressed,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS:**

1. Carrying out a comprehensive, impartial, effective and prompt investigation into the events with the aim of establishing and punishing the material responsibility of the masterminds and of all those individuals who took part in the events causing the forced displacement of the Cacarica Afro-descendant communities associated in CAVIDA, of the women head of household living in Turbo and to determine responsibility for the lack of an effective investigation which has led to impunity for the events. Such investigation shall be conducted from the perspective of the group affected and take into consideration the type of discrimination they suffer.

2. Adopting the measures necessary to avoid the repeated patterns of systematic violence, in conformity with the State's special obligation to protect and guarantee the fundamental rights of the Afro-descendant communities, with the support of these communities.

3. Carrying out a comprehensive, impartial, effective and prompt investigation into the events with the aim of establishing and punishing those responsible for the acts of torture and murder of Marino López and to determine responsibility for the lack of an effective investigation leading to impunity for his death.

4. Acknowledging its international responsibility for the denounced events in case 12.573 *Marino López et al.* (Operation Genesis) and release a public act of acknowledgement of its responsibility for the events of this case and an apology to the victims.

5. Adopting the necessary measures to guarantee to the members of CAVIDA and the women head of household living in Turbo their right to free movement and residence; the effective enjoyment of their lands and natural resources found there without being threatened by indiscriminate logging; and to guarantee the free and voluntary return of those displaced who have not yet returned to their place of origin in conditions of security.

6. Adopting the necessary measures to guarantee to the displaced fair compensation for the violations of which the Cacarica Afro-descendant communities associated in CAVIDA were victims and the women head of household living in Turbo.

7. Adopting procedures to recognize the vulnerability and the differences in the groups of victims of the displacement at greater risk of human rights violations, such as the Afro-descendants, children, women, and the women head of household in order that the State's response is tailored to serving their special needs and to adopting the necessary measures to guarantee their full participation in conditions of equality in public hearings, in having real equality of access to public services and to receive aid for their rehabilitation.

8. Making reparations to Marino López's family for the material and immaterial damage suffered by virtue of the violations of the American Convention established in the present report.

9. Making comprehensive reparations both at the individual as well as at the community level through specific mechanisms to the Afro-descendant community victims of Cacarica associated in CAVIDA and of the women head of household living in Turbo based on the principle of non-discrimination, to the participation of the victims in the design and implementation of reparation measures and differentiated reparatory criteria for the displaced Afro-descendants which should include: their special needs, acknowledging and respecting their identity, culture, lands, and the participation of their authorities in the decisions that will affect them.

10. Establishing a community reparations measure which acknowledges the impact of "Operation Genesis", the paramilitary raids and the displacement suffered by the Cacarica Afro-descendant communities, with the participation of the communities in its design and implementation.

11. Making adequate reparations to the displaced women of the Cacarica Afro-descendant communities associated in CAVIDA and to the women head of household living in Turbo, based on the principle of non-discrimination, and on criteria of gender including their special needs and the specific needs of the women head of household.

12. Making reparations to the children of the Cacarica Afro-descendant communities associated in CAVIDA, and to the children of the women head of household living in Turbo through measures in which the overriding interests of the child take precedence, the respect for their dignity, the principle of non-discrimination, the children's right to participate, as well as to respect their opinions in the design and implementation procedures for the reparation measures. The reparations measures must be aimed at ensuring the necessary conditions for the children to be able to benefit from an education and an adequate standard of living which permits them to reach their full potential as human beings.

Done and signed in the city of Washington, D.C., on the 31st day of the month of March, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero and María Silvia Guillén, Commissioners.

ANNEX I

LIST OF VICTIMS OF THE FORCED DISPLACEMENT<sup>432</sup>

NAME AND SURNAME	DISPLACED REGISTER NO.
1. Inocencio Berrío	
2. Serbelina Mena Moreno	
3. Jhohan Arley Berrío Berrío	30978597
4. Felix Antonio Berrío *	30978595
5. Never Rusne Berrío *	309788594
6. Rosalbina Berrío Berrío *	30978596
7. Yisela Mosquera	
8. Víctor Alfonso Serna	27177404
9. Andrés Felipe Serna *	
10. Leyder Sánchez Mosquera	
11. Weimar Mendoza Sánchez	
12. Luz Estela Chaverra Salazar	
13. Nubia Mosquera Córdoba	
14. Esneider Perea Mosquera	
15. Bilma Perea Mosquera	
16. Eliodoro Sánchez Mosquera	
17. Edicta Mosquera Palacio	
18. Yilber Sánchez Mosquera *	
19. Bartola Mosquera Roa	
20. Elmer Luis Mosquera *	
21. Jhonis Mosquera *	
22. Juan Carlos Mosquera *	
23. José Nelson Mosquera	
24. Leyton Mosquera	
25. Yarlenis Palacio Pacheco	
26. Tarcilo Mosquera Palacio	
27. María Nelly Hurtado Mosquera	
28. Andrés Mosquera Hurtado *	
29. Jhon James Oviedo Granada	
30. José Efraín Dávila Hibarguen	
31. Esomina Murillo Palacio	
32. Camila Alejandra Dávila Murillo *	32572046
33. María Angélica Mosquera Martínez	
34. Jhon Jairo Mena Palacio	
35. Rubiela Mosquera Palacio	
36. Leysis Yoerlin Mena Mosquera	
37. Gélver Andrés Mena Mosquera *	
38. Lidia Marina Mena Mosquera *	
39. Yasira Mosquera Córdoba	
40. Yamile Mosquera Palacio	
41. James Mosquera Palacio	
42. Marcela Mosquera Palacio *	
43. José Córdoba Palacio	
44. Luz Mila Mosquera Palacio	
45. Yeliza Córdoba Mosquera *	30973324

<sup>432</sup> Source: Census of forced displacement victims - Operation Genesis. Annex to petitioners' brief of March, 23, 2009.

46.	Yolianis Córdoba Mosquera	32572477
47.	Alejandro Palacio Mosquera	
48.	Nuvis Osario Sánchez	
49.	María Clementina Valencia Terán	
50.	Yerlin Valencia Terán *	30401529
51.	Maryelis Valencia Terán *	30401528
52.	Kener Yamith Gamboa Valencia *	30166439
53.	Jhone Perea Martínez	
54.	Elvia Hinestroza Roa	
55.	Magdaleno Medrano	
56.	Marta Cecilia Pareja	
57.	Jacinto Medrano Pareja	30973260
58.	Onasi Medrano Pareja	27176349
59.	Umbelina Medrano Pareja *	27176350
60.	Natalio Medrano Pareja *	30973271
61.	Luis Antonio Medrano Pareja *	30973272
62.	Yasira Medrano Pareja *	309732
63.	Januar López Julio	
64.	Ramiro Manuel Osorio	
65.	Ana Teresa Sánchez	
66.	Alvaro Javier Osorio *	
67.	Neyi Osorio Sánchez *	
68.	Nelsi Osorio Sánchez *	
69.	Norelis Osorio Sánchez *	
70.	Esther Romero Díaz	
71.	Gleyna Medrano Romero	27176131
72.	Jader Medrano Romero *	27176129
73.	Indira Medrano Romero *	27176127
74.	Marbel Medrano Romero *	
75.	Felix Martínez M.	
76.	Lilia Medrano Romero	
77.	Jhonys Ramo Medrano *	29983915
78.	Virginia del Socorro Martínez	
79.	Keyder Enrique Paternina M. *	27176337
80.	Oneida Paternina Martínez *	27176338
81.	José Wilington Palacio Murillo	
82.	Raquel Mosquera Palacio	
83.	María Derlin Palacio Mosquera *	27177463
84.	María Julia Palacio Murillo *	32572444
85.	Yanelis Palacio Morillo *	32572443
86.	Cruz Maritza Mosquera	
87.	Eduar Ramírez Mosquera *	
88.	Maritza Ramírez Mosquera *	
89.	José Erlin Murillo Palacio	
90.	Erika Sureliz Palacio	301665579
91.	Hernán Olguín Rivera	
92.	Zonia Rivera Valencia	
93.	Didier Olguín Rivera	2839092
94.	Jorge Luis Olguín Rivera *	25174426
95.	Luis Hernán Olguín Rivera *	25174427
96.	Taylor Mena Mosquera	27176020
97.	María Nelli Palacios Murillo	18434457
98.	Froilan Mosquera Palacio	

99.	Yalira Palacio Palacio	
100.	Jhon Jader Mosquera Palacio *	32572517
101.	Deysi Mosquera Palacio *	32572518
102.	Arley Mosquera Palacio *	32572519
103.	Weimar Perea Palacio	32572432
104.	Yusman Janis Mosquera Murillo	27174707
105.	Jaminton Murillo Palacio	
106.	Gloria Luz Martínez Ramo	
107.	Ana del Carmen Martínez	
108.	Jose Deyler Hurrutia Martínez	32572376
109.	Leydis Hurrutia Martínez *	32572375
110.	Juan Pablo Murillo Martínez *	32572372
111.	Farney Murillo Martínez *	
112.	Vasiliza Moreno Córdoba	
113.	Emilsen Martínez Martínez	
114.	Edgar Mosquera Martínez	
115.	Dilan Mosquera Martínez *	
116.	Tatiana Mosquera Martínez *	
117.	Felicia Palomeque Sánchez	
118.	Jhon Erlin Palacio Mosquera	
119.	María Lenis Palacio Romaña	1046530089
120.	Saidy Palacio Palacio *	6993492
121.	Jhoan Andrés Palacio Palacio *	6993493
122.	Jhon Erlin Murillo Mosquera	24079649
123.	Werlin Perea Palacio	325572431
124.	Yakelin Hurtado Quinto	
125.	Rosmiro Quinto Hurtado	
126.	José Jader Quinto Quinto	
127.	Avelangel Quinto Hurtado	
128.	Sandra Patricia Mosquera Valoys	
129.	Daniel Berrio	
130.	Ferney Sánchez González	
131.	Margarita Giraldo	
132.	Leysi Márquez Giraldo *	3008123
133.	Eliodoro Sánchez Mosquera	
134.	Justina Isabel Pérez	
135.	Eterbina Mosquera Murillo	
136.	José Nieve Mosquera Rengifo	
137.	Elsa Valois Palacio	
138.	Glenis Mosquera Valois *	28585829
139.	Juan de La Cruz Ibarguen	
140.	Liseth María Martínez	
141.	Juan David Ibarguen *	30401505
142.	Juan Deiner Ibarguen *	30401504
143.	Jhon Alexander Ibarguen *	
144.	Rosa Elena Mosquera Palacio	
145.	Wilmar Mosquera Mosquera *	36985328
146.	Pedro Torres Hernández	
147.	Wilmar Perea Martínez	1130804316
148.	Ismenia Mosquera Palacio	
149.	Jhobanis Mosquera Valois	
150.	Miselenis María López	
151.	Doralina Mosquera Hinestroza	

152.	Jose Erlin Mosquera Palacio	
153.	Gloria Mosquera Palacio	
154.	Glenis Mosquera Palacio *	
155.	Segundo Manuel Mendoza	
156.	Luz Mari Mosquera	
157.	Yesenia Sánchez Mosquera *	
158.	Jader Mendoza Mosquera *	
159.	Maryuri Mendoza Mosquera *	
160.	Geronimo Pérez Argumedo	
161.	Betzaida Julio Santana	
162.	Jar Leider Pérez Julio *	
163.	Luz Nelly Morillo Caicedo	
164.	Carlos Mario Matias Melendes	
165.	Henry Bautista Tamantilla	
166.	Luis Arselio Palacio Palomeque	
167.	Samuel Palacios Palomenque	
168.	Aura Mosquera Mosquera	
169.	Carlos Mario Fernández Machado	
170.	Raquel Murillo Mosquera	
171.	Orledis Mosquera Murillo *	
172.	Jhoner Andrés Mosquera Murillo *	
173.	Floriano Mosquera Río	
174.	Carolina Palacio Mosquera	32572494
175.	Diover Mosquera Palacio *	32572493
176.	Uvernís Mosquera Palacio *	
177.	Tomas Enrique Monterosa	32 572 470
178.	Lenis Ávila Bautista	
179.	Manuel Dolores Navarro	
180.	Zulma Salazar Cossio	5168463
181.	Yisela Chaverra Zalazar *	
182.	Bencol Chaverra Zalazar *	
183.	Yeffer Chaverra Zalazar	
184.	Modesta Mena Pérez	
185.	Dayver Javier Mena Pérez	32572505
186.	Dayner Rafael Mena Pérez *	32572483
187.	Felix Córdoba Santos	
188.	Orlando Córdoba *	
189.	Luis Mariano Velásquez Valencia	
190.	Geimer Sánchez Mosquera	
191.	James Sánchez Mosquera	
192.	Pedro Urtado Uwaldo	
193.	Deisi Mosquera Mosquera	
194.	Yeiner Mosquera Mosquera *	18434456
195.	Jhon Jader Palacios Murillo	
196.	Yurley Mosquera Palacios	
197.	Jorneyr Palacios Mosquera	
198.	Ángel Nelys Palacios	
199.	Mariluz Murillo	90080662890
200.	Luz Nivelly Palacios M	22010715
201.	Jhon Alvis Palacios *	277174737
202.	Ángel Tulio Palacios *	
203.	Alex Yefferson Moreno Mosquera	
204.	Mariela Palacios	

205.	Ana Rociris Palacios Palomeque	
206.	Wilmar Palacios Palomeque*	
207.	Francisco Gallego	
208.	Luis Perea Mosquera	
209.	Ayde Palacios Cossio	
210.	Niver Perea Palacios	32572433
211.	Fredy Perea Palacios*	32572434
212.	Alex Perea Palacios*	32572435
213.	Fredy Mendoza Sánchez	3097305
214.	Glendys Palacios Murillo	32572440
215.	Marcial Palacios	
216.	Mariana Murillo	
217.	Astrid Yuliana Palacios*	32572442
218.	Yesica Paola Palacios	32572441
219.	Luis Demetrio Hinestroza	
220.	Sofía Roa Ramírez	
221.	Samir Hinestroza Ramírez*	
222.	Yorman Hinestroza Moreno*	
223.	Herry Hinestroza Roa	
224.	Elis Yesenis Palacios Mosquera	18434464
225.	Diana Patricia Palacios Murillo	32572057
226.	Carlos Andrés Rivas Palacios*	32572058
227.	Oscar Antonio Palacios M	
228.	Remigia Mosquera	
229.	Edwar Palacios M	
230.	Yorlenis Palacios M*	
231.	Jobanny Palacio M*	
232.	Yasira Palacio*	
233.	Juan Carlos Cuesta Miranda	
234.	Yaduvís Córdoba Córdoba	26907942
235.	Henry Angulo Martínez	
236.	Pascual Ávila Carmona	
237.	Flora Mercedes Moreno Fuentes	
238.	Norberto Ávila Moreno*	27176180
239.	Dani Luz Ávila Moreno*	27176181
240.	Jorge Eliécer Ávila Moreno*	24391956
241.	Yurleidys Ávila Moreno*	271760676
242.	Kevin Ávila Moreno*	2209181
243.	Delis Ávila Moreno*	
244.	Eminto Orejuela Quinto	
245.	Luis Nelson Quinto Roque	
246.	Fanny Mosquera Murillo	
247.	Yoneidys Quinto Mosquera*	28507620
248.	Deirner Quinto Mosquera*	1045492431 de Turbo
249.	Waderson Quinto Mosquera*	27176313
250.	Yiverson Quinto Mosquera*	
251.	Nesman Orejuela Waldo	
252.	Martín Emilio Martínez Valderrama	
253.	Ingrid Johanna Orejuela Mosquera	
254.	Luis Enrique Martínez Valderrama	
255.	Ana Bertilde Berrio Mosquera	
256.	Jaider Enrique Martínez Berrio*	32572335
257.	Yezmín Adriana Martínez Berrio*	32572339

258.	Jarlenson Angulo Martínez	
259.	Onel Martínez	
260.	Eladio Orejuela Murillo	
261.	Ilsa Edith Quinto Mosquera	
262.	Niver Orejuela Quinto	32572368
263.	Jimmy Orejuela Quinto *	32572368
264.	Leyner Orejuela Quinto *	27879690
265.	Mónica Orejuela Quinto *	32572370
266.	Ferley Ávila Quinto	
267.	Erika Orejuela Quinto	
268.	Yenis Lorena Quinto Mosquera	
269.	Magnolio Orejuela Córdoba	
270.	Ana Sofía Quinto Valencia	
271.	Jany Orejuela Quinto	
272.	Deibis Orejuela Quinto	
273.	Ledys Yohana Orejuela Quinto *	
274.	Leyder Orejuela Quinto *	32572385
275.		27174552
276.	Feliciano Arboleda Hurtado	
277.	Edwin José Vivas Londoño	
278.	Jhon Alexander Rivas Blandon *	
279.	Leidys Patricia Mosquera B	
280.	Bernardo Vivas Mosquera	
281.	Maritza Blandón Mosquera	
282.	Jhon Alexander Rivas Blandon	0000043119
283.	Flor Emira Largacha Casade	
284.	Walter Valencia Largacha *	
285.	Alexis Valencia Largache *	
286.	Jonny Murillo Largache *	
287.	Prisca Rosa Pérez Argel	
288.	Domingo Antonio Sierra Pérez	
289.	Marcial Angulo Martínez	
290.	Ana Fadit Waldo Mosquera	
291.	Leidys Vanesa Waldo *	28507614
292.	Edwin Orejuela Quinto	
293.	Gloribel Angulo Martínez	
294.	Edilson Palacios Ramírez	
295.	Ledis Patricia Orejuela Quinto	
296.	Irma Martínez Murillo	
297.	Gloria Estela Angulo Martínez	
298.	Edilsa Angulo Martínez *	
299.	Oswaldo Valencia	
300.	Carmelina Moreno Álvarez	
301.	Edilberto Furnieles Páez	
302.	Placido Palacios Cabrera	
303.	Digna María Mosquero. R	
304.	Yader Palacios Mosquera *	
305.	Marco Fidel Velásquez Ulloa	
306.	Etilvia del Carmen Páez Sierra	
307.	Duber Arley Velásquez Páez *	
308.	Freiler Velásquez Páez *	
309.	Eider David Velásquez Páez *	
310.	Edilson García Páez *	

311. Edwin Furnieles Páez
312. Manuel Enrique Furnieles Páez
313. Soraida Mosquera Quinto
314. Luz Areiza Zalazar Córdoba
315. Yajaira Zalazar Córdoba
316. Nilson Zalazar Quinto
317. Rosalba Córdoba Rengifo
318. Natalia Paola Zalazar\*
319. Robinson Largacha Casade
320. Yaisi Maria Quinto Mosquera
321. Ana Maritza Urtado Orejuela
322. Alexis Mosquera Mena
323. Teresita Mosquera Mosquera
324. Leanis Mosquera Mosquera
325. Yeison Mosquera Mosquera
326. Rosana Orejuela Mosquera
327. José Wilton Orejuela Mosquera
328. Genier Orejuela Quinto
329. Alirio Mosquera
330. Rosa del Carmen Mosquera Quinto
331. Yuliana Mosquera Mosquera\*
332. Yulisa Mosquera Mosquera
333. Naufar Quinto
334. Elida Urrutia
335. Jesús Evelio Palacios Valencia
336. Gloria Stella Moya
337. Juan Carlos Mosquera Moya
338. Diana Marcela Mosquera Moya
339. Félix Martínez
340. Lilian Madrano Romero
341. Gregorio Mercado S.
342. Nilson Manuel Matia N.
343. Lili N. Salgado S.
344. Dilson M. Matías S.
345. Wilmer Matia Salgado
346. Jhon Jairo Matia
347. Hedinós Medrano Díaz
348. Carlos Mario Matia M
349. Luz Nelly Murillo C.
350. Augusto Manuel Gómez Rivas
351. Emperatriz Ávila Julio
352. Onny Livis Gómez Ávila
353. Alexander Gómez Ávila
354. Carolina Herrera Gómez
355. Ferney de Jesús Acosta M.
356. Rodrigo Antonio Tapia
357. Fidel Matia Mercado
358. Inés del Carmen Meléndez
359. Francisco Miguel Matia M
360. Jhon Jameth Matia M
361. Rodrigo A. Tapia
362. Juan Manuel Mogrovego
363. Jovita del Carmen Yáñez G.

364. Miguel Antonio Beltrán
365. Juan Daniel Mogrovejo M
366. Wilberto Mogrovejo M
367. Edarlis Beltrán Yáñez
368. Marco Fidel Matia Meléndez
369. Luzmila Arcia Pérez
370. Leyder E. Matia
371. Abernego Acosta López
372. Yadira del Carmen Matia
373. Carmen Edith Acosta M
374. Mileydis Acosta Matia
375. Eber Mora Arcia
376. Eber Mora Tapia
377. Magdaleno Medrano Terán
378. Marta Pareja
379. Onasis Medrano P.
380. Habelina Medrano
381. Luis Antonio Medrano
382. Yasira Medrano
383. Natalia Medrano
384. Jacinto Medrano P.
385. Wbeimar Perez Montiel
386. Delsin del Rocío Guerrero
387. Devora Pérez Montiel
388. Livarno Antonio Quintana
389. Esther María Romero
390. Jader Medrano Romero
391. Indira Medrano Romero
392. William Palacio
393. Silvia Deyanira Mosquera
394. Viviana Palacio Mosquera
395. Hermanegilda Mosquera
396. Teófilo Ávila
397. Luis Alexis Murillo
398. Leonardo Murillo
399. Jair Andrés Murillo
400. Luz Surely Murillo
401. Augusto Gómez
402. Emperatriz Ávila
403. Levis Gómez Ávila
404. Alexander Gómez
405. José Nelson Mosquera
406. María del Carmen Gómez
407. Melanio Moreno Barragán
408. Ana Rosa Álvarez Lozano
409. José Moreno Álvarez
410. Luis Alberto Moreno Álvarez
411. Carlos Enrique Moreno Álvarez
412. Antonio Moreno Álvarez
413. Federman Ávila Carmona
414. Femey Ávila Álvarez
415. Deysy Ávila Álvarez
416. María Teresa Ávila Álvarez

417.	Albarina Martínez Córdoba	
418.	Ramón Salazar Martínez	
419.	Walter Salazar Ganboa	
420.	Sofonia Martínez Chaverra	
421.	Josefina Mena Moreno	
422.	Jeison Moreno Mena	
423.	Eider Moreno Mena	16736342
424.	Deivis Moreno Quejada	27879936
425.	Iván Andrés Moreno	
426.	Virgelina Blandon Palacios	
427.	Eugenia Mena Blandon	
428.	Yefferson Mena Blandon	
429.	Jeison Mena Blandon	
430.	Maryleicy Mena Blandon	
431.	Jeison Mena Blandon	
432.	Alicia Mosquera Urtado	
433.	Wilber Mosquera	
434.	Ender Mosquera	
435.	Erdy Mosquera	
436.	Osme Mosquera	251098
437.	Yusely Mosquera	30053146
438.	Justa Lemos de Palomeque	
439.	Sodianies Yhicylys Morelos Angulo	1045489337
440.	Sodath Zulima Angulo Lemos	
441.	Samy Johana Morelos Angula	1046529043
442.	Aurora Murillo	
443.	José Mena Maquilón	71360912
444.	Eloisa Mosquera	
445.	Jesús Jamer Mosquera	
446.	Yaquelin Mosquera Murillo	36153981

**\* 117 children**

**194 women (39 girls)**

**163 families**