

INTER-AMERICAN COURT OF HUMAN RIGHTS

**CASE OF THE AFRO-DESCENDANT COMMUNITIES DISPLACED FROM THE CACARICA
RIVER BASIN (OPERATION GENESIS) v. COLOMBIA**

**JUDGMENT OF NOVEMBER 20, 2013
(Preliminary objections, merits, reparations and costs)**

In the Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis),*

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed as follows:**

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Roberto F. Caldas, Judge, and
Eduardo Ferrer McGregor Poisot, Judge

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) and Articles 31, 32, 41, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules of Procedure”), delivers this Judgment.

* This case was processed before the Inter-American Commission on Human Rights, and also during the proceedings on the contentious case before the Inter-American Court of Human Rights, as “*Marino López et al. (Operation Genesis) v. Colombia*.” However, by a decision of the Court, this Judgment is issued under the name of the *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*.

** Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the processing of this case or in the deliberation and signature of this Judgment pursuant to Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to this case, which establish that “[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case.”

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I.
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On July 25, 2011, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court, pursuant to the provisions of Articles 51 and 61 of the American Convention, the case of *Marino López et al. (Operation Genesis) v. the Republic of Colombia* (hereinafter “the State” or “Colombia”). The Commission submitted all the facts contained in its Merits Report. The case refers to the State’s responsibility for alleged human rights violations committed in relation to the so-called “Operation Genesis” conducted from February 24 to 27, 1997, in the general area of the Salagüí River and the Truandó River, a zone near the territories of the Afro-descendant communities of the Cacarica River basin, in the department of El Chocó, which resulted in the death of Marino López Mena and the forced displacement of hundreds of persons, many of whom were members of the Afro-descendant communities that lived on the banks of the Cacarica River. In addition, it was alleged that the right to collective property of these communities had been violated in relation to the territories that they had ancestrally owned and which the State had recognized to them, owing to both the displacements and the illegal exploitation of natural resources carried out by companies with the State’s permission and tolerance. The failure to investigate the facts and to punish those responsible was also alleged, as well as the lack of judicial protection in relation to these events.

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

a. *Petition.* On June 1, 2004, the presumed victims, through the *Comisión Intereclesial de Justicia y Paz* (hereinafter “the petitioners”), lodged a petition alleging human rights violations committed by the State in relation to Operation Genesis in the communities of the Cacarica river basin.

b. *Precautionary measures.* On February 8, 2003, the Inter-American Commission required the State to take exceptional measures so that law enforcement personnel protected the life and integrity of the “*Nueva Vida*” and “*Esperanza de Dios*” communities and indicated that the Subcommittee on Protection of the Cacarica Joint Verification Committee should consider establishing the permanent presence of State representatives in the settlement to ensure security.

c. *Admissibility Report.* On October 21, 2006, the Inter-American Commission approved Admissibility Report No. 86/06, in which it concluded that it was competent to examine the claims presented by the petitioners concerning the presumed violations of the American Convention.¹ In addition, it indicated that the petition was admissible because it met the requirements established in Articles 46 and 47 of the Convention.

d. *Merits report.* On March 31, 2011, the Commission issued Merits Report No. 64/11 (hereinafter “the merits report”) pursuant to Article 50 of the Convention, in which it reached the following conclusions and made the following recommendations to the State:

i. *Conclusions.* The Commission concluded that the State was responsible for the violation of the following rights recognized in the American Convention:

- Articles 4 and 5 of the American Convention, in relation to Article 1(1) of this instrument to the detriment of Marino López,
- Article 5 of the American Convention, in relation to Article 1(1) to the detriment of his immediate family;
- Article 19, to the detriment of the children of the Cacarica communities and of Marino López;

¹ Cf. Inter-American Commission on Human Rights, Admissibility Report 86/06, Petition 499-04, Admissibility, *Marino López et al. (Operation Genesis) v. Colombia*, October 21, 2006.

- Article 5 of the American Convention, in relation to Article 1(1) to the detriment of the Cacarica communities associated in *Comunidades de Autodeterminación, Vida y Dignidad* (hereinafter “CAVIDA”) and the women heads of household living in Turbo;
- Articles 1(1), 5, 11, 17, 19, 21, and 24 to the detriment of the members of the Cacarica Afro-descendant communities associated in CAVIDA, and the women heads of household living in Turbo; and also in relation to Article 19, to the detriment of the children of the communities;
- Articles 8 and 25 of the American Convention, in relation to Article 1(1), to the detriment of the members of the Cacarica communities associated in CAVIDA and the women heads of household living in Turbo, and
- 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 detriment of the immediate family of Marino López.

ii. Recommendations. The Commission recommended to the State that it:

- Carry out a comprehensive, impartial, effective and prompt investigation into the events in order to identify and punish all the masterminds and perpetrators of the events that resulted in the forced displacement of the communities associated in CAVIDA, and of the women heads of household living in Turbo, and to determine responsibility for the lack of an effective investigation which has led to impunity for the events;
- Carry out a comprehensive, impartial, effective and prompt investigation in order to establish and punish those responsible for the torture and murder of Marino López and to determine responsibility for the lack of an effective investigation leading to impunity for his death;
- Adopt the measures necessary to avoid the repetition of systematic patterns of violence, with the collaboration of the communities;
- Acknowledge its international responsibility for the facts denounced in the case of Marino López *et al.* (Operation Genesis), and conduct a public act to acknowledge its responsibility for the events of this case and to provide redress to the victims;
- Adopt the necessary measures to guarantee the members of CAVIDA and the women heads of household living in Turbo their right to freedom of movement and residence; the effective enjoyment of their lands and the 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, under safe conditions;
- Adopt the necessary measures to guarantee the displaced fair compensation for the violations of which the Cacarica Afro-descendant communities associated in CAVIDA and the women heads of household living in Turbo were victims;
- Adopt the necessary procedures to recognize the vulnerability and the differences of the groups who were victims of displacement and who were at greater risk of human rights violations, so that the State's response is aimed at responding to their special needs, and adopt the necessary measures to guarantee their full participation in public matters under equal conditions, and their real equality of access to public services and to receive assistance for their rehabilitation, and
- Provide adequate pecuniary and non-pecuniary reparations for the human rights violations declared in the merits report.²

e. *Notification to the State.* The merits report was notified to the State on April 25, 2011, and it was granted two months to provide information on compliance with the recommendations. On June 27, 2011, the State requested an extension, which was granted until July 11, 2011. The State presented its response on July 12, 2011.

f. *Submission to the Court.* Once the said period and the extension granted had expired, the Commission submitted this case to the jurisdiction of the Inter-American Court “owing to the need to obtain justice for the victims in view of the State’s failure to comply with the recommendations.” The Commission appointed Commissioner María Silvia Guillén and the then Executive Secretary, Santiago A. Cantón, as delegates, and the Deputy

² Cf. Inter-American Commission on Human Rights, Merits report 64/11, Petition 499-04, Merits, *Marino López et al. (Operation Genesis) v. Colombia*, March 31, 2011.

Executive Secretary, Elizabeth Abi-Mershed, together with Karla I. Quintana Osuna and Karin Mansel, Executive Secretariat lawyers, as legal advisers.

3. *Request of the Inter-American Commission.* Based on the above, the Inter-American Commission asked the Court to declare the international responsibility of Colombia for the violation of the following rights recognized in the American Convention:

- a. “the violation of the rights to life and to personal integrity recognized in Articles 4 and 5 of the Convention, in relation to its Article 1(1) to the detriment of Marino López and Article 5 to the detriment of the members of his family”;
- b. “the violation of the right to personal integrity recognized in Article 5 of the Convention, in relation to its Article 1(1) to the detriment of the members of the Cacarica communities associated in CAVIDA and the women heads of household who live in Turbo, and also in relation to its Article 19, to the detriment of the children of the community and of Marino López”;
- c. “the violation of the right to freedom of movement and residence established in Article 22 of the Convention, in relation to its Articles 1(1), 5, 11, 17, 19, 21 and 24 to the detriment of the members of the Afro-descendant communities of the Cacarica associated in CAVIDA and the women heads of household who live in Turbo, and also in relation to its Article 19 to the detriment of the children”;
- d. “the violation of the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the Convention, in relation to its Article 1(1) and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the family of Marino López,” and
- e. “the violation of the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the Convention, in relation to its Article 1(1), to the detriment of the members of the Cacarica communities associated in CAVIDA and the women heads of household who live in Turbo.”

4. In addition, the Inter-American Commission asked the Court to order the State to provide specific measures of reparation, which will be described and analyzed in the corresponding chapter (*infra* Chapter X).

II PROCEEDINGS BEFORE THE COURT

5. *Notification of the State and the representatives.* The Commission’s submission of the case was notified to the State and the representatives on November 29, 2011.

6. *Brief with motions, arguments and evidence.* On January 29, 2012, the representatives presented their brief with motions, arguments and evidence³ (hereinafter “motions and arguments brief”), pursuant to Articles 25 and 40 of the Rules of Procedure.

7. *Answering brief.* On June 7, 2012, the State submitted to the Court its brief filing preliminary objections,⁴ answering the submission of the case, and with observations on the motions and arguments brief (hereinafter “answer” or “answering brief”). Initially, the State appointed Assad Jose Jater Peña and Jorge Alberto Giraldo Rivera as Agents. Subsequently, on January 29, 2013, it appointed Rafael Nieto Loaiza as Agent for this case.⁵

³ The representatives sent the motions and arguments brief by email. They forwarded the original brief and some annexes to the Court with a communication of February 29, 2012. Subsequently, in a communication of March 19, 2012, following a request for clarification sent by the Secretariat, the representatives sent the missing annexes to the motions and arguments brief, as well as the pertinent clarifications.

⁴ The preliminary objections filed by the State were “lack of competence” *ratione personae*, failure of the Commission to comply with the requirements established in Article 35(1)(c) for the submission of the case, and failure of the motions, arguments and evidence brief to comply with the regulatory requirements.

⁵ In its answering brief of June 7, 2012, the State appointed Luz Marina Gil and Jorge Alberto Giraldo Rivera as Agent and José Emilio Lemus Mesa as adviser. In a note of the Secretariat of July 6, 2012, regarding the said appointment, the Court indicated that it understood that Assad José Jater Peña would no longer be acting as the State’s Agent. Finally, in a communication of January 29, 2013, received by the Court’s Secretariat the same day, the State appointed Rafael Nieto Loaiza as its sole agent. In a communication of February 8, 2013, the State advised that Luz Marina Gil García would no longer form part of its delegation during the public hearing.

8. *Observations on the preliminary objections.* On August 9 and 10, 2012, the Commission and the representatives each presented their observations on the preliminary objections and the document that the State had entitled “partial acknowledgement of responsibility.”

9. *Public hearing and additional evidence.* On December 19, 2012, the President issued an Order,⁶ in which he required that the statements of 14 presumed victims, four expert witnesses proposed by the representatives, two expert witnesses offered by the Commission, and two expert witnesses proposed by the State be received by affidavit. In this Order, the President also convened the parties and the Commission to a public hearing that took place on February 11 and 12, 2013, during the Court's ninety-eighth regular session, which was held at its seat.⁷ During the hearing, the Court received the statements of two presumed victims and one expert witness proposed by the representatives, one expert witness proposed by the Commission, and one deponent for information purposes, one expert witness and one witness proposed by the State, as well as the final oral observations and arguments of the Commission, the representative of the presumed victims, and the State, respectively. During the said hearing, the Court requested the parties to present certain helpful information and documentation.

10. *Amici curiae.* On January 14, February 27, and March 1, 12 and 14, 2013, respectively, the Members of the Black Ethnic Group victims of the forced displacement from Bajo Atrato, Chocó, Colombia, Thomas Mortensen of Christian Aid (UK and Ireland), the International Center for Transitional Justice, Jaime Arturo Fonseca Triviño of the *Confesion Voluntariado Misionero Cristiano MANOS UNIDAS*, the *Coordinación Colombia Europa Estados Unidos*,⁸ and Macarena Sáez of the American University Washington College of Law Impact Litigation Project,⁹ submitted *amicus curiae* briefs.

11. *Final written arguments and observations.* On March 13, 2013,¹⁰ the representatives and the State forwarded their final written arguments, and the Commission presented its final written observations. The representative and the State responded to the Court's requests for helpful information and documentation.

12. *Observations on annexes to the final arguments.* The briefs with final written arguments and observations were forwarded to the parties and to the Commission on April 4, 2013.

13. *Helpful evidence.* The President granted the representatives and the State a time frame for presenting any observations they deemed pertinent on the helpful evidence requested by the Court (*infra* paras. 61 to 69), as well as on the information and attachments forwarded by

⁶ Cf. *Case of Marino López Mena et al. (Operation Genesis) v. Colombia*, Order of the President of the Court of December 19, 2012.

⁷ At this hearing, there appeared: (a) for the Inter-American Commission: José Jesús Orozco, Commissioner and President of the Commission, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano and Jorge Meza, Executive Secretariat lawyers; (b) for the representatives of the presumed victims: Liliana Andrea Ávila, Iván Danilo Rueda and Abilio Peña Buendía, all from the *Comisión Intereclesial de Justicia y Paz*, and (c) for the State of Colombia: Rafael Nieto Loaiza, Agent; Hernando Herrera Vergara, Colombian Ambassador to Costa Rica; Yolanda Gómez Restrepo, Director for Legal Defense of the State's National Legal Defense Agency; Adriana Guillén Arango, Director General of the State's National Legal Defense Agency, and José Lemus, adviser.

⁸ Composed of the *Corporación Colectivo de Abogados José Alvear Restrepo* (CCAJAR), the *Grupo Interdisciplinario para los Derechos Humanos* (GIDH), the *Corporación Jurídica Libertad* (CJL), the *Corporación Jurídica Yira Castro* (CJYC), the *Corporación Reiniciar*, the *Asociación para la Promoción Social Alternativa MINGA*, and the *Humanidad Vigente Corporación Jurídica* (HVCJ), all organizations members of the Working Group on Extrajudicial Executions of the *Coordinación Colombia Europa Estados Unidos*, the *Comision Colombiana de Juristas* (CCJ), the *Consultoría para los Derechos Humanos and el Desplazamiento* (CODHES), and Carlos Rodríguez Mejía.

⁹ This brief, in English, was received on February 27, 2013.

¹⁰ The State forwarded the brief with final arguments to the Secretariat of the Court on March 13, 2013, without its annexes, and these were received 26 days after the time limit established for the presentation of the brief.

the representatives and the State. On April 24 and 30, 2013, the representatives¹¹ and the State, respectively, forwarded the observations requested.

14. *Observations of the Commission.* On April 26, 2013, the Inter-American Commission presented its observations on the annexes to the final written arguments of the representatives.

15. *Provisional measures.* On May 30, 2013, in an order of the Court, a request for provisional measures filed in favor of Bernardo Vivas Mosquera, Jhon Jairo, Sofía Roa, Elvia Hinestroza Roa, Etilvia Páez, Edwin Orejuela, Sofía Quinto, Ángel Nellys Palacios, Emedelina Palacios, Josefina Mena, Pascual Ávila Moreno and Alicia Mosquera Hurtado was rejected.¹²

III COMPETENCE

16. The Court is competent to hear this case, pursuant to Article 62(3) of the Convention, because Colombia has been a State Party to the Convention since July 31, 1973, and acknowledged the contentious jurisdiction of the Court on June 21, 1985. Furthermore, Colombia ratified the Inter-American Convention to Prevent and Punish Torture on December 2, 1998.

IV PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. Declaration by the State and observations of the Commission and of the representatives

Declaration by the State

17. The State partially acknowledged its international responsibility in this case, as follows:

- a) For the violation of the right to judicial guarantees and judicial protection established in Articles 8 and 25 of the Convention in relation to the obligation to respect the rights contained in Article 1(1) of this instrument with regard to the members of Marino López Mena's family "who were duly identified and individualized," owing to the violation of the reasonable time that, to date, had prevented identifying and punishing the masterminds and perpetrators of the death of Marino López Mena.
- b) With regard to the victims of forced displacement who are considered as such by the Court, the violation of Articles 8 and 25 of the Convention, owing to the unjustified delay in identifying and punishing the masterminds and perpetrators of this displacement, in violation of the reasonable time.
- c) Since the commencement of the contentious case, it had described the efforts and the progress made by the judicial authorities in order to clarify the facts alleged in this case, indicating the remedies available to the victims to obtain judicial protection;¹³ nevertheless, despite the efforts made and the existence of criminal investigations,¹⁴ to

¹¹ Three days after the expiry of the respective time frame, the representatives presented their observations on the documentation forwarded by the State on March 21, 22 and 25, 2013, which was part of the documentation requested as helpful evidence.

¹² Cf. *Matter of Ávila Moreno et al. (Case of Operation Genesis)*. Request for provisional measures with regard to Colombia. Order of the Inter-American Court of May 30, 2013.

¹³ The State indicated the following judicial remedies: *amparo*, *habeas corpus*, group actions, contentious-administrative action, disciplinary action, and the criminal actions underway.

¹⁴ The procedural progress made in the domestic sphere includes: (a) proceedings 2332, 0426 and 1042 under the responsibility of the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's

date no concrete results had been obtained owing to “the complexity of the events that are being investigated, was a result, in particular, of the *modus operandi* of the illegal organizations that originated the facts, the vulnerable situation of the population that was a victim of those facts, and the difficult conditions for the access of the judicial officials to the area where the events occurred.”

Observations of the Commission and of the representatives

18. The Commission argued that, “although this acknowledgement of responsibility is assessed positively, it is of limited scope and only refers to one of the numerous factors of impunity that have been proved in this case; that is, non-compliance with the guarantee of a reasonable time.”¹⁵ It also indicated that the dispute still subsisted with regard to the violation of the other rights established in the American Convention and in the Inter-American Convention to Prevent and Punish Torture.¹⁶ Accordingly, the Commission asked the Court: (a) to grant legal effect to the acknowledgement; (b) to prepare a detailed description of the events and of the violations that occurred, and (c) to make a thorough analysis of the violations that had been partially accepted and those that had been contested, and to proceed to declare the international responsibility of the State in this case.

19. Meanwhile, the representatives indicated that they appreciated the fact “that the State had acknowledged the vulnerable situation of the victims and the difficulties of access to the site of the events,” but that, in reality, “the investigations conducted by the State lacked rigor and determination, and it was this, and not the difficulties indicated by the State, that explain why the case remains in total impunity 15 years after the events.” Therefore, they considered that the State had “not acknowledged the factual and legal grounds that led the Commission to declare it responsible for the violation of Articles 8 and 25 to the detriment of the victims” and, consequently, that the said procedural action, was “not aimed at ending the dispute concerning this fact, so that it cannot be considered a true acknowledgement of responsibility, or a positive contribution to the progress of the instant case,” nor was it helping to establish the truth of what happened. Thus, they asked that the State’s acknowledgment of responsibility be rejected and that the Court proceed to “determine precisely what happened.”

B. Considerations of the Court

20. In accordance with Articles 62 and 64 of its Rules of Procedure,¹⁷ and in exercise of its powers concerning the international protection of human rights, a matter of international public

Office to investigate the crimes of murder of a protected person, acts of terrorism, forced displacement, and conspiracy to commit a crime, identifying as victims: Marino López Mena, and the communities displaced from the basins of the Cacaria and Sutatá Rivers; (b) the confessions obtained under the Justice and Peace Law that have resulted in the elaboration of four theories regarding the events that led to the death of Marino López Mena, and (c) the investigative proceeding being conducted by the Prosecutor General’s Office in order to identify the community councils or communities that form part of the Cacarica River basin, and thus achieve full individualization and identification of the victims.

¹⁵ The Commission indicated, in particular, that different elements demonstrate the State’s lack of due diligence in the investigation of the facts of the case; for example, the lack of security experienced from the start of the proceedings by “one of the deponents and the agents of justice involved, which, even though the State was aware of it, did not result in specific measures of protection in order to ensure their participation in the investigation.” The Commission added that the presumed “victims in the case continue to be subjected to attacks and violence that, added to their precarious situation, prevent access to justice and have an inhibiting effect on their participation in the proceedings.” Regarding the factors of impunity, it observed that “the pressure suffered by officials of the Human Rights Unit during the initial stages of the investigation and the disciplinary proceedings opened against them, combined with a context [of] threats, led the [Commission] to grant precautionary measures owing to the danger they faced [...]”

¹⁶ The dispute continues with regard to Articles 1(1), 4, 5, 8, 11, 17, 19, 21, 22 and 25 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

¹⁷ Articles 62 and 64 of the Court’s Rules of Procedure establish: Article 62. “Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the

order that goes beyond the will of the parties, the Court must ensure that statements of acknowledgement of responsibility are acceptable for the objectives sought by the inter-American system. This task is not limited to merely confirming, recording or taking note of the acknowledgement made by the State, or verifying the formal conditions of the said statements, but rather the Court must relate them to the nature and severity of the alleged violations, the demands and interest of justice, the particular circumstances of the specific case, and the attitude and position of the parties,¹⁸ so that it can identify, insofar as possible and in the exercise of its competence, the truth of what occurred.¹⁹

21. Taking into account the violations acknowledged by the State (*supra* para. 17), the Court considers that the dispute has ceased with regard to: (a) the violation of Articles 8 and 25 of the Convention to the detriment of the members of Marino López Mena's family, owing to the unjustified delay in the proceedings required to identify and punish the masterminds and perpetrators of the death of Marino López, in evident violation of a reasonable time, and (b) the violation of the principle of reasonable time, in the terms of Articles 8 and 25 of the American Convention, to the detriment of the victims of forced displacement.

22. Regarding the rights contained in Articles 8 and 25 of the American Convention, the dispute remains with regard to the alleged violation of due diligence in the investigations. Likewise, the Court notes that the dispute continues with regard to: (a) the facts and claims relating to the alleged violations of Articles 4, 5, 8 and 25, in relation to Article 1(1) of the Convention, as well as with regard to the alleged violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Marino López Mena; (b) the alleged violation of the rights contained in Articles 5, 19, 8 and 25, to the detriment of the next of kin of Marino López; (c) the alleged violations of Articles 8, 25 and 5, in relation to Articles 19 and 22, in relation to Articles 1(1), 5, 11, 17, 19, 21 and 24 of the Convention, to the detriment of the members of the Afro-descendant communities of the Cacarica associated in CAVIDA and of the women heads of household who live in Turbo, and also to the detriment of their children, and (d) the establishment of eventual reparations, costs and expenses.

V PRELIMINARY OBJECTIONS

A. Arguments of the parties and of the Commission

"Lack of competence ratione personae"

23. The State argued that, although Article 35(1) of the Court's Rules of Procedure indicates that the merits report must identify the presumed victims, the Commission has based this case on three different groups of victims, abandoning its criteria of individualization and identification. The State also indicated that the representatives had made a late submission of a list of the presumed victims of the forced displacement, "disregarding the fact that the peremptory and exclusive moment for the identification of the presumed victims [...] is that of the submission of the case, on presenting the merits report." Consequently, the State

presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects." Article 64. Continuation of a case. Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles."

¹⁸ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012 Series C No. 258, para. 16.

¹⁹ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, *Case of García and family members v. Guatemala. Merits, reparations and costs*, para. 16.

considered that the above constituted “a clear violation of its procedural guarantees and of equality of arms,” and requested that the Court declare the case inadmissible and that it accept as victims only those presumed victims who were duly identified and individualized.

24. The Commission considered that the State’s claims were inadmissible and observed that its arguments did not constitute a preliminary objection, because they did not contest the Court’s competence, but rather corresponded to the merits stage. The Commission also indicated that, both the list attached to the Merits report, and the list presented subsequently by the petitioners contained elements of individualized identification of the victims and that an explanation of the reasons for this determination had been provided.²⁰ It pointed out that both parties were in agreement that a series of complications and difficulties justified the need to adopt flexible criteria to respond to the particularities of the case so that Article 35(2) of the Rules of Procedure was applicable.

25. The representatives argued that this objection should be rejected, because certainty existed as to those who constituted the universe of victims in the instant case, a delimitation that had been established fully in the Merits report. Regarding the differences between the lists, it clarified that several factors determined the failure to include these presumed victims: (a) the difficult physical access to Cacarica and even to the two humanitarian zones and the neighboring settlements, and (b) the impossibility that some people had to attend the meetings when the censuses of presumed victims were drawn up. They repeated that the State itself had mentioned these difficulties when referring to the reasons why the facts surrounding the forced displacements had not been investigated adequately. The representatives also considered that the violations committed by the State had harmed a cohesive human group, with historical and ethnic roots established before the events of this case. Consequently, they alleged that the presumed victims formed a collective universe in the terms of Article 35 of the Court’s Rules of Procedure. Lastly, they noted that the exclusion of one group of them would have serious effects on the process of reconstructing their individual, family and collective life project, and would have serious consequences for the community structure.

“The Commission’s failure to comply with the requirements established in Article 35(1)(c)) for the submission of the case”

26. The State argued that, according to Article 35(1)(c)) of the Rules of Procedure, the Commission must indicate the real and verifiable reasons that led it to submit the case to the Court, and its observations on the State’s response to the recommendations made in the report. It affirmed that it had not failed to comply with the recommendations contained in the report and that the Commission had not taken into account the different actions taken by the State that were being “implemented successively, for short, medium and long-term execution and impact and which, therefore, required a prudential time for their full completion within the framework of domestic law, the State’s policies, and the institutional structure and coordination,” and could not be accomplished in the space of two months. The State therefore asked the Court not to consider that it had failed to comply with the recommendations in the Merits report that had to be implemented successively, which was the reason for the submission of the case to its jurisdiction, and, consequently, that it should “reject and deny the measures of reparation associated with the said recommendations that had been requested by the Commission in the pertinent section.”

27. The Commission indicated that its determination concerning reparations cannot be considered a preliminary objection. It also indicated that the information presented by the State

²⁰ The Commission added that, during the admissibility stage, it had established as victims in the case the “members of 22 Afro-descendant communities who lived on the banks of the Cacarica River.” It also indicated that, during the merits stage, when the petitioners had delimited the presumed victims in the case more precisely, it was able to identify 446 members of the Cacarica communities associated in CAVIDA and the women heads of household who lived in Turbo, indicating that some of these persons appear on the Unified List of Displaced People established by Law 387 of 1997.

had already been evaluated at the appropriate procedural moment (the Merits report) and that the State could have requested additional time to comply with the recommendations, a situation that did not occur in this case. It also indicated that the said information did not specify clearly how each recommendation had been complied with or, in particular, any progress in the domestic investigations and the rectification of the shortcomings noted in the case. It indicated that the submission of the case required an analysis of the entire case file, and it was not viable to divide up the aspects of the case submitted to the Court into “recommendations complied with” and “recommendations that have not been complied with.” The representatives did not present any arguments in this regard.

“Failure by the Commission to comply with the requirements for the submission of the case established in Article 35(1)(f)”

28. The State contested the inclusion in the proceedings of the expert opinions of Federico Andreu Guzmán and Michael Reed, provided to this Court in other cases concerning Colombia, considering that they were limited to the specific circumstances of those cases. Similarly, the State indicated that part of the expert opinion of Javier Ciurlizza should not be admitted “because it has no relationship or interest for inter-American public order.”

29. The Commission observed that the expert opinions offered when submitting the case to the Court met the regulatory requirement of being related to aspects of inter-American public order. The representatives did not present arguments on this point.

“Non-compliance of the motions, arguments and evidence brief with the regulatory requirements”

30. The State argued that, failing to respect the provisions of Article 40(a) of the Rules of Procedure, the representatives had presented a series of facts and claims that bore no relationship to the *litis* of the case and that the Court should therefore reject them. Moreover, the Court should also declare inadmissible those facts that could not be included in the factual framework submitted to the Court in the Merits report.

31. The Commission observed that the State's allegations correspond to the merits of the matter and indicated that the information provided by the representatives merely complemented and developed the factual presumptions on which the processing of this case was based. Lastly, it indicated that the representatives have broad autonomy to request the measures of reparation they consider pertinent.

32. The representatives alleged that the only function of the facts referred to in the motions and arguments brief is to provide context to the events and facts that occurred during and after Operation Genesis, abiding by the factual framework established by the Commission. They stressed that the purpose of their arguments was to explain in greater detail that the crime committed against Marino López was a crime against humanity and, also, that clarifying and reinforcing a context does not mean that the Court must rule on new facts or on persons who are not in the universe of victims established by the Commission.

B. Considerations of the Court

33. The Court recalls that preliminary objections are a mechanism whereby a State seeks, in a preliminary manner, to prevent the analysis of the merits of a disputed matter and, to this end, it may file an objection to the admissibility of a case or to the competence of the Court to hear a specific case or any of its aspects, due either to the person, subject matter, time or place, provided that the said claims are of a preliminary nature.²¹ If these claims cannot be

²¹ Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013 Series C No. 260, para. 25.

considered without first analyzing the merits of a case, they cannot be analyzed by means of a preliminary objection.²²

34. Regarding this case, the Court considers that the claims presented as “preliminary objections” by the State refer to formal requirements for submission of the case and correspond to matters relating to the merits or, eventually, to the reparations, but do not affect the Court’s competence to hear this case. In other words, they are not a matter for preliminary objections.

35. Nevertheless, the Court considers, with regard to the first point, that the State has questioned, on the one hand, whether or not the requirements established in Article 35(1) and 35(2) of the Rules of Procedure concerning the identification of the presumed victims in the case was complied with, and this will be analyzed in the following chapter under Preliminary Considerations (*infra* Chapter VI). On the other hand, the State has questioned the status or condition of several persons as presumed victims, and this will be examined and decided by the Court in the chapter on reparations of this Judgment (*infra* paras. 420 to 435).

36. Regarding the second point, the Court notes that the affirmation made would entail a detailed analysis of the appropriateness and effectiveness of the measures implemented by the State to comply with the Commission’s recommendations in the Merits report. This must be analyzed, if pertinent, when establishing the reparations if the alleged violations of the Convention are verified. The third claim refers to matters concerning the admissibility of the evidence and not of the case itself, and was ruled on by the President of the Court in the Order of December 19, 2012.²³ Lastly, it is not for the Court to rule in a preliminary manner on the factual framework of the case, because this analysis corresponds to its merits and, at that time, the State’s claims can be taken into account, if pertinent.

VI PRELIMINARY CONSIDERATIONS ON THE PRESUMED VICTIMS

37. In relation the State’s claim concerning the individualization of the persons who may be considered presumed victims in this case (*supra* para. 23), the Court notes that, in its brief submitting the case, the Commission indicated that, pursuant to Article 35 of the Court’s Rules of Procedure, it attached Merits report 64/11, which included an annex on the identification of the presumed victims, with the names of 446 persons.²⁴ However, in the same brief, the Commission indicated “that in a communication subsequent to the issue of the Merits report, the representatives of the victims presented an organized, revised and completed list of victims of forced displacement” and that, on “the said list they had included 26 new families of victims, who had not been able to be present at the time the first census was conducted.” This second list is included among the annexes from the proceedings before the Commission²⁵ that were forwarded to the Court, and 497 persons appear on it.²⁶ In addition, in a communication of

²² Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*, para. 25.

²³ Cf. *Case of Marino López Mena et al. (Operation Genesis) v. Colombia*, Order of the President of the Court of December 19, 2012, considering paragraphs 37 to 39.

²⁴ Neither Marino López nor the members of his family appear on that list, and it does not differentiate those who are women heads of household.

²⁵ Cf. List of victims of forced displacement. Operation Genesis (evidence file, folios 7943 to 7969). This list was amended again by the Commission by a brief of September 13, 2011.

²⁶ This new list had 65 additional persons, and excluded from the list six persons who were not displaced, and three whose names were repeated. An analysis of this second list shows that of the 65 persons that were added, 13 were already on the list that accompanied the Merits report. In addition, while several people have been added to the second list, they do not appear on the list of 65 additional persons presented by the representatives. Consequently, the Court is not clear about the exact number of persons who are added in the second list, or the reasons why changes

January 25, 2012, the Commission forwarded a third list of victims that had been provided by the presumed victims' representatives in a brief of November 2, 2011, in which they underlined that the list of victims with the Merits report did not correspond to all those who, since March 1997, had been part of the organizational process and subjects of the domestic and international proceedings.²⁷ The names of 512 persons appear on this third list.²⁸ Regarding the differences between the lists, the Commission stressed that, in the instant case, a series of complications and difficulties had arisen that justified precisely the need to adopt flexible criteria to respond to its particularities.

38. Subsequently, in their motions and arguments brief, the representatives presented a fourth list of presumed victims with 531 names. In this brief, they asked that the Court: (a) exclude from the universe of presumed victims those who, by error, had been considered as such without this being so, by the Inter-American Commission;²⁹ (b) recognize as victims, 121 persons who had not been listed in the Merits report prepared by the Commission and who were presumed victims of Operation Genesis and the simultaneous paramilitary incursion, and (c) incorporate the complete list of the next of kin of Marino López who were displaced during Operation Genesis and who, in addition, were ancestral inhabitants of the Cacarica River basin.³⁰ Later, during the public hearing, the representatives indicated that "the universe of victims we are talking about in this case is composed of 531 persons," and that "[the list] is indeed different from the initial list presented by the Inter-American Commission."³¹ They

have been made to what was indicated on the first list of the Merits report. Also, five family members of Marino López appear on this list. Lastly, it should be noted that the name of Marino López does not appear on this list.

²⁷ In this communication, the Commission indicated that the representatives had explained that: (a) some names of presumed victims were "repeated"; (b) there were persons who "were not victims of the displacement caused by the murder of Marino López or the military actions" in Operation Genesis, so that "they should be excluded," and (c) some presumed victims did not appear on the list, because they had been outside the humanitarian and biodiversity zones when the list was drawn up. The Commission also recalled that the case is particularly complex owing to the context of internal armed conflict in which the events occurred and the internal displacement, and the consequences of these factors. Therefore, it asked that the Court take into consideration that, in cases such as this one, it is difficult to obtain precise information that allows all the victims of the violations to be individualized, and apply a broad interpretation in the definition of the victims. Accordingly, the Commission asked the Court that, with regard to the persons included by the representatives of the victims in the said brief, it take into account the exception established in Article 35(2) of the Court's Rules of Procedure.

²⁸ The new list added 79 persons who had been displaced, and who did not appear on the list with the Merits report. Also, 14 family members of Marino López were added. Furthermore, it was indicated that 26 persons were repeated, the representatives had been unable to contact seven, and 12 persons "had not been displaced by Operation Genesis." Despite these explanations, the Court notes that the numbers presented by the Commission are not consistent with the changes announced in the brief. Lastly, it should be noted that the name of Marino López does not appear on this third list either.

²⁹ The representatives indicated that: (a) 26 persons were repeated on Annex I of the Merits report; (b) the representatives are not in contact with 7 persons mentioned in the Merits report, and (c) 16 persons mentioned in the Merits report were not displaced.

³⁰ The representatives referred to 13 family members of Marino López. However, Marino López does not appear on the list of 531 persons presented by the representatives.

³¹ In addition, in the motions and arguments brief, the representatives indicated that the *Comisión Intereclesial de Justicia y Paz* knew of the census prepared by the Social Solidarity Network (RSS) in 1998 and 1999 in which 425 persons were listed. The representatives indicated that, the following persons should be added to that list: (a) 22 persons who have "family ties with the other persons listed on the RSS census, who were not heads of household, but who were victims and whose data were obtained by comparing the birth records"; (b) 10 persons who "were not born on the date that the RSS census was prepared, but who were born while their family unit was displaced"; (c) 47 persons appear on the census conducted by the Social Solidarity Network and the Agrarian Institute in the context of the "Vivir Mejor" rural housing program; (d) three persons who are members of the same family temporarily moved to Bogotá, because, in 1997, the head of the family testified before the Special Investigations Office of the Public Prosecution Service and, owing to the danger, remained in this city until very recently. His testimony was mislaid 16 years' ago, without any effort having been made to clarify this, and (e) 24 persons were displaced in other parts of the country at the time the census was prepared. Accordingly, they concluded that "there is no doubt that the 531 victims represented by the *Comisión Intereclesial de Justicia y Paz* before the inter-American human rights system has been fully identified by State entities at the moment of the forced displacement and following this.

added that these differences are explained by “the difficulties of access to the territory where there is armed conflict and the permanent danger faced by the communities when preparing a definitive list of victims.”³²

39. The Court recalls that, under Article 35(1) of the Rules of Procedure, the report to which Article 50 of the Convention refers “must establish all the facts that allegedly give rise to a violation and identify the presumed victims.” Thus, it corresponds to the Commission and not to this Court to identify the presumed victims in a case before the Court precisely, and at the appropriate procedural opportunity.³³ However, the Court recalls that, according to Article 35(2) of the Rules of Procedure, “[w]hen it has not been possible to identify [in the brief submitting the case] one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims.”

40. As noted, in this case the lists presented by the Commission and by the representatives differ, because more persons are included on the latter (*supra* paras. 37 and 38). Furthermore, it is relevant to recall that, during these proceedings, the Commission made repeated reference to the complexities and difficulties to fully identify all the presumed victims in the specific circumstances of the case, and to the consequent need to adopt flexible criteria to respond to its particularities. The representatives shared this opinion. In addition, as indicated by the representatives, without this being contested, the special characteristics of the context and the difficulties of access to the territory were recognized by the State itself when it referred to the reasons why it had not investigated the events surrounding the forced displacement adequately.

41. In application of Article 35(2) of the Rules of Procedure, in order for a person to be considered a victim and to be awarded reparation, he or she must be reasonably identified. However, as noted in the main briefs, the case refers to events involving several hundred persons who were forced to displace to different places that took place around 15 years ago, in an area of difficult access and with the presence of illegal armed groups. The Court recalls that its objective is not “to obstruct the development of the proceedings with excessive formalities, but rather, to the contrary, to adapt the definition given in the judgment to the requirements of justice.”³⁴

42. Consequently, bearing in mind the scope and nature of the facts of the case, as well as the time that has passed, the Court finds it reasonable that it is difficult to identify and to individualize each of the presumed victims, especially in the case of displaced populations, in a vulnerable situation, that are difficult to locate. On this basis, the Court considers it reasonable that the initial list of presumed victims presented by the Commission could have varied during the processing of this case, and therefore, in application of Article 35(2) of the Rules of Procedure, the Court will take into account the list presented by the representatives in their motions and arguments brief.

³² The representatives added that “several persons were not included, and it is an omission that [they had] acknowledged throughout the proceedings, but this does not annul the list of victims presented with the brief with motions, arguments and evidence.”

³³ Cf. *Case of the Ituango Massacre v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of García and family members v. Guatemala. Merits, reparations and costs*, para. 34.

³⁴ *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para 34, and *Case of the the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252, para. 54.

VII. EVIDENCE

43. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its consistent case law concerning evidence and its assessment,³⁵ the Court examines and assesses the documentary probative elements forwarded by the parties at the appropriate procedural moments, the statements and testimony provided by affidavit and during the public hearing, as well as the helpful evidence requested by the Court. To this end, it abides by the principles of sound judicial discretion, within the corresponding legal framework, taking into account the whole body of evidence and the arguments submitted in the case.³⁶

A. Documentary, testimonial and expert evidence

44. The Court received various documents presented as evidence by the Commission, the representatives and the State, attached to their main briefs (*supra* paras. 5 to 7, 11 and 12). In addition, the Court received the affidavits prepared by 14 presumed victims and eight expert witnesses.³⁷ Regarding the evidence provided during the public hearing, the Court received the statement of two presumed victims, three expert witnesses, one deponent for information purposes, and one witness.³⁸ The purpose of their statements was established in the above-mentioned Order of the President of the Court of December 19, 2012 (*supra* para. 9).

B. Admission of the documentary evidence

45. In the instant case, the Court admits those document forwarded by the parties on the appropriate procedural occasion (*supra* paras. 5 to 7) that were not contested or opposed, and the authenticity of which was not challenged.³⁹

46. Regarding the newspaper articles submitted by the parties and the Commission together with their different briefs, the Court has considered that they may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case. Thus, it decides to admit those documents that are complete or that, at least, allow their source and date of publication to be discerned, and will assess them taking into account the body of evidence, the observations of the parties and the rules of sound judicial discretion.⁴⁰ Also, regarding some documents indicated by the parties by means of electronic links, the Court has established that if a party provides, at least, the direct electronic link to the document cited as evidence and it is possible to access it, neither legal certainty nor procedural balance is affected, because it can be located immediately by the Court and by the

³⁵ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of García Lucero et al. v. Chile, Preliminary objection, merits and reparations*, Judgment of August 28, 2013. Series C No. 267, para. 45.

³⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*, para. 76, and *Case of García Lucero et al. v. Chile*, para. 46.

³⁷ Namely: 1) Jerónimo Pérez Argumedo; 2) Marco Fidel Velázquez Ulloa; 3) Alicia Mosquera Hurtado; 4) Jhon Jairo Mena Palacios; 5) Ángel Nelis Palacio Quinto; 6) Lucelis Bautista Pérez; 7) Eliodo Sanchez Mosquera; 8) Ernestina Valencia Teheran; 9) Elvia Hinestroza Roa; 10) Etilbia del Carmen Paez Sierra; 11) Mirna Luz Cuadrado; 12) Francisco Frenio Fernandez Padilla; 13) Leopoldina Ulloa, and 14) Henry Angulo Martínez, and by the expert witnesses: 1) Elizabeth Salmón; 2) Sebastián Albuja; 3) Albert Galinsoga; 4) Hernando Gómez; 5) Gloria Amparo Sánchez; 6) Gimena Sánchez-Garzoli; 7) Juan Pablo Franco and 8) María Paulina Leguizamón Zarate.

³⁸ That is, the statement of two presumed victims, Bernardo Vivas Mosquera and Sofía Roa Ramírez; three expert witnesses, Javier Ciurlizza, Jesús Alfonso Flórez López and Luis Emilio Cardozo Santamaría, and of the deponent for information purposes, Miguel Samper Strouss, and the witness Germán David Castro Díaz, both proposed by the State.

³⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of García Lucero et al. v. Chile*, para. 47.

⁴⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 146, and *Case of García Lucero et al. v. Chile*, para. 48.

other parties.⁴¹ With regard to the videos presented by the representatives, which were not contested, and the authenticity of which was not challenged, the Court will assess their contents in the context of the body of evidence and applying the rules of sound judicial discretion.⁴²

47. Regarding articles or texts in which events relating to this case are indicated, the Court considers that these are written works that contain declarations or statements of their authors for public consumption. Thus the assessment of their contents is not subject to the formalities required by testimonial evidence. However, their probative value will depend on whether they corroborate or refer to aspects of this specific case.⁴³

B.1. Documentary evidence submitted after the motions and arguments brief and the answering brief

48. On September 11, 2012, the representatives forwarded a judicial decision issued by the Eighth Court of the Bogota Special Circuit of August 23, 2012,⁴⁴ concerning what they considered a supervening fact, because it occurred after the presentation of the motions and arguments brief. Both the Commission and the State⁴⁵ asked that this evidence be incorporated into the case file. Consequently, in accordance with Article 57(2) of the Rules of Procedure, the Court considers it in order to admit this documentation as it refers to facts that occurred after the presentation of the motions and arguments brief, and that, in addition, are relevant in order to decide this case.

49. On February 7, 2013, the State sent the Court a note from the Prosecutor General's Office with a report dated February 6, 2013, by the 44th Prosecutor delegated to the Superior Court of the Justice and Peace Unit as well as the "clips" of the voluntary confessions of four demobilized members of the "Revolutionary Armed Forces of Colombia" (hereinafter "the FARC") that had been made on January 29 and February 5, 2013. The State asked that this information and the voluntary confessions be admitted as evidence in the proceedings. The Commission and the representatives did not contest the admission of this documentation as supervening evidence. Consequently, in keeping with Article 57(2) of the Rules of Procedure, the Court considers it in order to admit this information and documentation, because it could relate to the facts of this case, and was produced after the submission of the answering brief. The evidence presented will be assessed together with the body of evidence and as pertinent to this case.

50. On September 27, 2012, the representatives presented a brief in which they included: (a) information relating to possible mechanisms implemented in order to generate confusion and tension in the region that could affect the international processing of the case"; and also regarding (b) "a dangerous situation that the victims are currently facing," and (c) "the

⁴¹ Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of García Lucero et al. v. Chile*, para. 49.

⁴² Cf. *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 93, and *Case of Mendoza et al. v. Argentina*, para. 56.

⁴³ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 72, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, para. 37.

⁴⁴ The decision issued refers to the judgment in which General Rito Alejo del Río was declared criminally responsible for the murder of Marino López Mena. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant: Rito Alejo del Río, judgment of August 23, 2012.

⁴⁵ In this regard, the State indicated that "the first instance judgment handed down by the Eighth Court of the Bogota Special Circuit on August 23, 2012, is a useful informative document to know the progress made and developments in a criminal proceeding related to the facts in dispute in the case of López et al. (Operation Genesis) v. Colombia" and asked the Court "that this judicial decision be admitted into the international case file and, consequently, be assessed based on criteria of sound judicial discretion and together with the rest of the documentary evidence opportunely provided by the parties to the international proceedings."

continuation that has been verified of the illegal logging operations by the company *Maderas del Darién*, according to the attached communication and documents.” The State opposed the admission of the brief and its annexes, considering that they corresponded to arguments and evidence that was time-barred, so that admitting it would violate the State’s right of defense, because the submission of briefs and arguments outside the regulatory procedural occasions without any justification or grounds, alters legal certainty, to the extent that the exclusive and peremptory procedural stages become inconclusive and undetermined, thus affecting equality of arms owing to the uncertainty that this situation generates for the State. The Commission also presented observations on this information, but did not contest its admissibility.

51. With regard to the procedural moment for the presentation of documentary evidence, according to Article 57(2) of the Rules of Procedure, this must be presented, in general, together with the briefs submitting the case, with motions and arguments, or answering the submission, as appropriate. The Court recalls that evidence provided outside these procedural opportunities is not admissible, except in the case of the exceptions established in the said Article 57(2) of the Rules of Procedure; in other words, *force majeure*, grave impediment or in relation to an event that occurred after the said procedural moments.⁴⁶

52. Regarding this brief, the Court notes that some documents⁴⁷ presented in annexes are dated before the presentation of the motions and arguments brief and, consequently, the representatives could have been aware of them, so that they will not be incorporated into the body of evidence in the case, because they were not submitted at the appropriate procedural moment, taking into account that they are not justified by any of the exceptions established in Article 57(2) of the Rules of Procedure. In relation to an incomplete and undated form containing a “survey, displaced population Cacarica [River] basin, Bajo Atrato, Chocó, Colombia,” the Court notes that its time-barred presentation was not justified by one of the exceptions established in Article 57(2) of the Rules of Procedure either. Regarding the other documents that were sent with the said brief,⁴⁸ the Court notes that they refer to documents produced by the organization that represents the presumed victims, and that they denounce supposedly dangerous situations that the presumed victims in the case are facing. In this regard, the Court notes that the said documents refer to events that do not form part of the actual framework of the case and to situations that are being monitored by the Inter-American Commission in the context of the precautionary measures in favor of the Cacarica Communities. Therefore, these documents cannot be incorporated into the body of evidence in this case.⁴⁹

53. The Court also notes that the representatives and the State forwarded several documents with their final written arguments.

54. With regard to the statements and the documents entitled “Census *Vivir Mejor* Program”; “Solidarity Network Census” and “Letter, legal representative, Cacarica river basin” presented by the representatives, the State indicated that “the said statements [should] not be admitted [...] and, since the representatives have incorporated some parts of them into their arguments,

⁴⁶ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 40.

⁴⁷ These documents are: (a) document of the *Comisión Intereclesial de Justicia y Paz* dated September 27, 2012, and (b) Minutes No. 001 of the special General Assembly of the Community Council of the Black Communities of the Cacarica river basin dated September 17, 1999.

⁴⁸ Two letters dated September 10 and 25, 2012, from the *Comisión Intereclesial de Justicia y Paz* to the Ministry of the Interior and the President of the Republic of Colombia respectively.

⁴⁹ The same criterion is applicable to information provided in a brief dated October 25, 2012, in which the representatives of the presumed victims “advised” that a member of CAVIDA had received “a direct threat from a member of the Turbo paramilitary structures,” and that members of the Justice and Peace Commission in Bogota “had been followed by unknown persons.”

the Court should not take them into account either when deliberating.”⁵⁰ The State added that if the Court admitted this, “it would result in a violation of due process by preventing the State from being able to contest the evidence.” Regarding the document, “Census of the Río Sucio inhabitants,” the State noted that “it is not signed by the author or the spokesperson,” that “the document is a series of lists with significant errors,” and that “the lists, evidently prepared by third parties, in many cases do not bear the signature of those who appear on the list, or the fingerprint in the case of those who are unable to sign their names, and identity documents are missing.” In addition, the State observed that several of these documents seek “to change the universe of presumed victims in the case.” With regard to the document “Certificate of persons deceased,” the State underscored that Alirio Mosquera Palacio is not authorized to certify the death of anyone and that this “authority is exclusive to the National Civil Registry, based on a death certificate issued by a registered doctor, or the Institute of Forensic Medicine.” The State indicated that it had no observations to make on the other documents.

55. For its part, the Commission stated that, regarding the annexes to the final written arguments of the representatives, “the documents provided by the representatives constitute important probative elements to dissipate any possible doubts that the Inter-American Court might have had on the identification of victims in complex cases such as this one, which were revealed by the questions posed during the hearing.

56. Regarding the annexes sent with the State’s brief with final arguments, the representatives indicated that they were time-barred and that this information had “not been assessed at the proper moment by the other parties during the proceedings, and they had not had the opportunity to include it in their assessment of the evidence in their final oral or written arguments, so that introducing it at this point infringed their procedural rights.” Likewise, the Commission indicated that these documents had not been submitted at the appropriate procedural moment, and this should be understood, “notwithstanding the assessment that the Court may make of the documents requested as helpful evidence.” It also indicated that several of the annexes were “aimed at questioning the representatives’ lists of victims and those with the Commission’s report.”

57. Regarding the annexes to the final arguments of the representatives,⁵¹ the State did not contest them, and the Court incorporates them into the case file. As regards the three documents with the censuses,⁵² the Court considers that this documentation is useful to determine the lists of presumed victims in the case, so that it incorporates them into the case file in application of Article 58(b) of the Rules of Procedure. These annexes will be assessed with the whole body of evidence and as pertinent for this case. Regarding the other documents, the Court deems that the presentation of these documents was time-barred, so that they will not be considered in this Judgment.

58. With regard to the annexes to the State’s final written arguments, the Court indicates that several of these refer to judicial measures and proceedings concerning the events that form the factual framework of the case.⁵³ In addition, several of these documents were

⁵⁰ It indicated, in particular, that: (a) they should have been individualized and their purpose defined at the time the representatives presented their brief with motions, arguments and evidence; (b) furthermore, they were not included on the definitive list presented to the Court by the representatives; (c) there was no justification of *force majeure* or grave impediment that would have prevented their presentation at the appropriate procedural moment, and (d) the State was unable to question the deponents or present observations on the statements.

⁵¹ The documents presented by the representatives entitled “Certification, members of the Higher Council” and “Certification Spokesperson Río Sucio”

⁵² Documents: (a) Census inhabitants Río Sucio; (b) Census *Vivir Mejor* program, and (c) Census Social Solidarity Network.

⁵³ These documents are: (a) report of the Prosecutor General’s Office on the voluntary confessions provided by the demobilized members of the FARC, who were part of the José María Córdoba Bloc; (b) copy of the statement made by J.E.V.R. Romaña on March 3, 2007, before the 21st Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit; (c) copy of the sworn statement made by J.E.V.R. Romaña on November 5, 2008,

requested by the Court as helpful evidence. Therefore, the Court incorporates these annexes into the evidence file in the terms of Article 58(a) of its Rules of Procedure, and they will be assessed together with the whole body of evidence as pertinent for this case. In addition, as regards the documents that may help clarify the identity of the persons who should be included on the list of presumed victims in the case,⁵⁴ the Court incorporates them into the body of evidence in keeping with Article 58(a) of its Rules of Procedure, because it considers them useful, and will assess them together with the whole body of evidence as pertinent for this case. Regarding the Colombian laws provided by the State,⁵⁵ this is incorporated into the evidence file because it relates to well-known public facts, because it is related to the helpful evidence requested by the Court, and because it is useful for deciding this case.

B.2. Documentation handed over during the public hearing by two deponents and transfer of expert opinions from other cases submitted to the Court's consideration

59. With regard to the documentation handed over during the public hearing by expert witness Jesús Alfonso Flórez López and the deponent for information purposes, Miguel Samper Strouss, entitled “Anthropological appraisal” and “The transitional justice arrangement in force in Colombia,” respectively, the Court notes that this documentation was forwarded to the parties and to the Commission. The Court admits this documentation as part of their statements, because it finds it useful for deciding this case.

60. In addition, the Court reiterates that, in its brief submitting the case, the Commission requested “the transfer of the expert opinion provided by the expert Michael Reed in the case of *Manuel Cepeda Vargas v. Colombia*, as well as the expert opinion of Federico Andreu Guzmán in the cases of *the Mapiripán Massacre* and *the La Rochela Massacre*, both against Colombia.” In this regard, the President’s Order of December 19, 2013, already decided that the said documents would be incorporated into the file of this case, so that the parties have had ample

before the 14th Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit of Bogota D.C; (d) copy of the judicial inspection conducted at the scene of the murder of Marino López on April 11, 2007, by the 21st Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit; (e) copy of the statement made by V.C. on April 11, 2007, before the 21st Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit; (f) copy of the statement made by Luis Aristarco Hinestrosa on April 13, 2007, before the 21st Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit; (g) copy of the expansion of the statement made by J.A.Q. Aristarco on March 3, 2007, before the 21st Special Prosecutor attached to the National Human Rights and International Humanitarian Law Unit; (h) copy of the sworn statement made by Adan Quinto Aristarco on November 4, 2008, before the 14th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit of Bogota D.C; (i) copy of testimony given by Fredy Rendón Herrera on November 7, 2007, before the 14th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit of Bogota D.C; (j) copy of testimony given by Fredy Rendón Herrera on October 8, 2008, before the delegate Prosecutor of the National Human Rights and International Humanitarian Law Unit of Medellín, Antioquia; (k) copy of the statement made by Luis Muentes Mendoza on August 29, 2008, before the 14th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, and (l) copy of the statement made by Diego Luis Hinestrosa Moreno on August 29, 2008, before the 14th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit.

⁵⁴ These documents are: (a) inconsistencies in the definitive list provided with the motions and arguments brief; (b) verification of victims against the National Civil Registry; (c) verification of victims against the Justice and Peace information system of the Prosecutor General’s Office; (d) list of supposed victims benefitting from precautionary measures; (e) verification against the first list presented by the Victims Unit; (f) inconsistencies in the Commission’s lists, the motions and arguments brief, and precautionary measures; (g) verification against the database of the Victims’ Attention and Reparation Unit (digital); (h) list resulting from comparing the so-called definitive list of victims of the murder of Marino López and Operation Genesis (motions and arguments brief) and the Unified List of Displaced People; (i) list of victims of Operation Genesis who are members of the communities that belong to the organization and who were not included on the list sent to the Inter-American Court (annex sent by the representatives at the time of the motions and arguments brief; (j) List. Beneficiaries of the housing project, and (k) list of the beneficiaries of projects of the Social Prosperity Department.

⁵⁵ These norms are as follows: (a) Policy of attention to the Black, Afro-Colombian, Raizal and Palenquera communities: Decree law 4635 of 2011, and (b) Decision 00841 of April 26, 1999, in which collective title is awarded to 23 communities listed in the decision.

opportunity to present any observations they deemed pertinent on their admissibility or assessment.⁵⁶

B.3. Documentation requested in the order convening the public hearing, during this hearing, and subsequently

61. In the Order of December 19, 2012 (*supra* para. 9), the State was required to present certain documentation that had been requested by the representatives in their motions and arguments brief.⁵⁷ At the same time, the parties and the Commission were advised that they would be given the procedural opportunity to refer to this documentation in their final arguments if they considered this necessary. The order also stipulated, as regards the rest of the information requested by the representatives, that “a decision on the pertinence of requesting this would be taken at the appropriate time.”⁵⁸

62. On February 4, 2013, the State sent part of the documentation requested in the Order of December 19 and, on February 7, 2013, it was asked to present, as soon as possible, the remaining information required in the fourteenth operative paragraph of the said Order (*supra* para. 9). That request was reiterated by the President of the Court during the public hearing and by a communication of March 8, 2013. In addition, during the hearing, the President of the Court asked the State to present different documents as helpful evidence,⁵⁹ many of which were mentioned in the statement of the deponent for information purposes proposed by the State⁶⁰ and in the opinions of the expert witnesses proposed by both the Commission⁶¹ and the State.⁶²

⁵⁶ Cf. *Case of Marino López et al. (Operation Genesis)*. Order of the President of the Court of December 19, 2013, considering paragraph 39.

⁵⁷ In particular, the Order required the State to present, by February 4, 2012, at the latest, “complete and updated information on the current status of the investigations in relation to the situation prior to the displacement and to the events that followed it, in the terms indicated by the representatives, as well as updated information on the disciplinary investigations into the facts that had been opened in August 2003, referred to by the Commission in its Merits report.” *Case of Marino López Mena et al. (Operation Genesis) v. Colombia*, Order of the President of the Court of December 19, 2012, considering paragraph 41 and fourteenth operative paragraph.

⁵⁸ Cf. *Case of Marino López et al. (Operation Genesis)*. Order of the President of the Court of December 19, 2013, considering paragraph 41.

⁵⁹ The President requested the following documentation: (a) any documents that may exist, even confidential documents, that follow up on Operations Order 004 of February 1997. Internal evaluations; reports on the implementation of this operation, which was, in essence, what is known as Operation Genesis; (b) he reiterated the contents of the Secretariat’s note of February 7, 2013, requesting the missing information in relation to the fourteenth operative paragraph of the said Order, and (c) “certain case files that had been requested (with their contents) and the rulings made on them: first, criminal investigation 5767, today 425; second, criminal investigation 2332 and, third, the investigations conducted under Law 975, the Justice and Peace Law, in relation to the facts of this case, including the complete voluntary confessions that relate to this case, as the case file only contains parts of these statements.”

⁶⁰ For example, deponent Miguel Samper mentioned the functions of the Historical Memory Center, a public entity attached to the Administrative Department for Social Prosperity. He also indicated that, “the recent report imposed something that the Prosecution Service had been implementing *motu proprio*, but that was not being done as a legal obligation, and that is that an investigation plan must be drawn up based on macro-criminal patterns so that any resulting indictments before the courts respond to an investigative strategy that compares all these sources that I am mentioning.” Statement of Miguel Samper, deponent for information purposes proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013. The deponent also referred in the written document delivered to the Court at the time of his statement to the fact that the Prosecutor General’s Office had created a new National Analysis and Contexts Unit, “as an instrument of criminal policy aimed at dealing, above all, with organized crime, by using the tools of criminal analysis and the creation of contexts.” He also noted that, at a second stage, the judicial agents developed a new approach to investigation and prosecution aimed at the identification of patterns of criminal activities in specific contexts. Statement of Miguel Samper, deponent for information purposes proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013, and document attached to the statement of Miguel Samper, deponent for information purposes proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013 (evidence file, folios 16504 and 16514).

⁶¹ For example, expert witness Javier Ciurlizza mentioned the different studies carried out by the Historical Memory Center. The expert witness also referred to the “general framework for indictments” which the prosecutors

Furthermore, at that time, the President of the Court clarified that this request would be completed by a written communication addressed to the State.

63. In relation to the above, on March 8, 2013, pursuant to Article 58(c) of the Rules of Procedure, the State was against required to provide various documents and information⁶³ as helpful evidence.⁶⁴ Regarding this request, it is pertinent to reiterate, as the Court did in the written communications to the parties,⁶⁵ that, according to the provisions of the Rules of Procedure, the Court may address itself directly to any organ or authority of the States Parties to the Convention in order to request any information or documentation that it deems pertinent

called the “georeferencing” of cases and to the specific paramilitary blocs, each of which “had an accumulated history” relating to “the leaders, the chain of command, the different connections, and the acts they had committed.” Cf. Testimony of Javier Ciurlizza, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 11, 2013.

⁶² Expert witness Juan Pablo Franco referred to various documents of “CONPES” (the National Council for Economic and Social Policy). The expert witness also referred to reports on forced displacement by the the Public Prosecution Service and by the Ombudsman’s Office. He also alluded to the Early Warning System (EWS) of the Ombudsman’s Office and to the Historical Memory Center. Cf. Testimony by affidavit of Juan Pablo Franco, expert witness proposed by the State, dated January 31, 2013 (evidence file, folios 15335).

⁶³ The State was asked to provide: (a) all the documentation, both confidential and public, annexes or of any other nature, produced before and after, in relation to Operations Order 004 of February 1997 / Operation Genesis of the Armed Forces, in particular, all military intelligence information; (b) all the military intelligence documentation, both confidential and public, annexes or of any other nature, that refers to illegal armed groups in the Cacarica region during 1996 and 1997, with special emphasis on the “Elmer Cárdenas” paramilitary bloc; (c) as requested in the Secretariat’s note of February 7, 2013, that it provide the pertinent explanations or forward, as soon as possible, the missing information in relation to the request made in the fourteenth operative paragraph of the Order of the President of December 19, 2012; (d) based on the information emerging from the expert opinions that had been presented, the State was asked to present all the CONPES documents prepared by the National Council for Economic and Social Policy, National Planning Department, that refer to the situation of the Afro-descendant communities of the Urabá, and to the situation of forced displacement in Colombia, especially in the Urabá region. The said documents should be presented accompanied by the corresponding annexes and references, and (e) based on the information presented by the deponent for information purposes, Miguel Samper Strouss, all the documentation and reports contained in the Historical Memory Center, which is attached to the Administrative Department for Social Prosperity, that refer to the acts of violence against the Afro-descendant communities of the Urabá Chocóano during 1996 and 1997 and, in particular, against the Cacarica communities in the municipality of Riosucio. This should also include the information and reports of the former National Reparation and Reconciliation Commission (CNRR), including its Regional Offices and the Historical Memory Unit attached to the CNRR before the promulgation of the Victims Law. Furthermore, the Prosecutor General’s Office was asked to provide: copy of the complete, digitized files, with a detailed table of contents, including all the decisions or judgments delivered and the probative elements contained in them, of the following: (a) criminal investigation No. 5767 (today 426) against retired General Rito Alejo del Río; (b) criminal investigation No. 2332 against retired General Rito Alejo del Río and some members of the “Elmer Cárdenas” paramilitary group; (c) the investigations conducted under Law 975 of 2005 in relation to the events of this case and the displacements in the Urabá Chocóano region, including the complete voluntary confessions and their transcripts if they exist; (d) information on cases in which certified copies were sent to the Prosecutor General’s Office for investigations relating to law enforcement agents of the Urabá region presumably involved in acts associated with paramilitary groups in the Urabá region during the second half of the 1990s, and (e) investigations conducted by ordinary criminal justice against members of the illegal armed groups or against members of the Colombian Armed Forces in which an analysis was made of the connections that existed between the latter and the paramilitary structures in the Urabá Chocóano region during the second half of the 1990s. Furthermore, the Ombudsman’s Office was asked to provide a “copy of all the public or confidential documentation and reports produced by the Ombudsman’s Office concerning the forced displacements of the communities of the Cacarica river basin in 1997, in relation to incursions in this area by different illegal armed agents, as well as actions of the Armed Forces during 1996 and 1997, and in relation to the implementation of Operation Genesis,” and the Public Prosecution Service was asked for a copy of the complete files, scanned and with a detailed table of contents, including all the decisions issued and the probative elements contained in them, of the investigations conducted by the Public Prosecution Service into the members of the Colombian Armed Forces in relation to: (a) the events of Operation Genesis, and (b) presumed activities of association, collusion and coordination of members of the Armed Forces with paramilitary groups in the Urabá Chocóano region during 1996 and 1997.

⁶⁴ Several of these documents correspond to those already requested in the Order of December 19 convening the public hearing (*supra* para. 9), and others to information that had been requested by the judges of the Court during the public hearing.

⁶⁵ Cf. See, the note of the Secretariat of April 8, 2013, addressed to the State’s Agent in this case, on the instruction of the President, CDH-12,573/179.

to decide the cases submitted to its consideration, and this can be sent directly to the Court by the respective organ or authority, without necessarily being channeled through the State's Agents in the specific case.

64. In response to these requests, at different times, the State provided part of the documentation through its Agents for this case, the Ministry of Foreign Affairs, the Prosecutor General's Office, and the Ombudsman's Office.⁶⁶ In addition, in a note of March 21, 2013, the State indicated that "the request for information on matters that were not directly related to these matters [was] not pertinent," because "what is being debated is the presumed responsibility of the State only and exclusively for the displacements that supposedly occurred as a result of Operation Genesis and the murder of Marino López." In this regard, the Court reiterates the content of note CDH-12,573/179 of April 8, 2013, in which it recalled that "it is for the Court to determine the pertinence and assessment of any request for evidence made by the Court, and not the parties to the litigation."⁶⁷

65. Once the documentation had been received, and based on the adversarial principle and the right of defense of the parties, it was all forwarded to the parties with a note of the Secretariat dated June 19, 2013. At that time, both parties and the Commission were granted until July 3, 2013, to present any observations they deemed pertinent "on all the information and the documentation sent by the State and by Colombian institutions that had been requested in application of Article 58 of the Court's Rules of Procedure, with the express stipulation that they should respect the confidentiality of this information." It was noted that that Court would decide on the admissibility of this documentation and of the respective arguments at the appropriate time.

66. On July 3, 2013, the State indicated that it had no knowledge of the content of the documentation sent by the Prosecutor General's Office because it had been forwarded directly and in a sealed envelope by diplomatic channels. The State added "that if the Court takes into account the new elements obtained under Article 58(c) in its judgment, without having granted the State the opportunity to comment on them at the appropriate time, it would be responsible for a flagrant violation of the right of the State to due process of law." In its notes of July 15 and August 13, 2013, the State also considered that the Court had "violated due process of law flagrantly by requesting [helpful evidence] at the inappropriate procedural moment"; namely, after the hearing and when the final arguments had been presented."

67. Regarding the State's arguments concerning the procedural occasion to request evidence, the Court reiterates that, under Article 58(c) of the Rules of Procedure, it may request any entity, office, organ or authority of its choice to obtain information, to express an opinion, or to prepare a report or opinion on any specific point "at any stage of the proceedings." This authority to request helpful evidence at any stage of the proceedings conferred by the Court's Rules of Procedure has been put into practice in numerous contentious cases with regard to Colombia⁶⁸ and other States,⁶⁹ at different stages of the proceedings; for example, in the order

⁶⁶ In communications of March 21 and 22, 2013, Colombia forwarded part of the documents requested on March 8, 2013. On April 9, 2013, through the Director of the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs of Colombia, it forwarded documentation issued by the Colombian Prosecutor General's Office in response to the information requested in notes CDH-12,573/146 and CDH-12,573/164 of March 8 and 22, 2013, respectively. Also, on June 5, 2013, the Ombudsman's Office forwarded documentation in response to the information requested in the Secretariat's notes of March 8 and May 10, 2013.

⁶⁷ On that occasion, it indicated that "if the State has not provided any of the documentation because it considers that it is unrelated to the purpose of the case [...] that it [should] forward it all within an additional time frame granted until April 19, 2013."

⁶⁸ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 11; *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*. Judgment of September 15, 2005. Series C No. 134, paras. 24, 25, 28 and 35; *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 68; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 7; *Case of Manuel Cepeda Vargas v. Colombia*, paras. 9 and 12; *Case of Escué*

convening the hearing,⁷⁰ during the public hearing,⁷¹ or after the public hearing.⁷² The Court notes that the State had been asked to provide much of this documentation in the order convening the hearing (*supra* para. 9) and that, during the hearing, the President of the Court asked the State to present documents as helpful evidence (*supra* para. 13), clarifying that this request would be completed by a written communication addressed to the State.

68. Furthermore, regarding the State's observations in its brief of July 3, 2013, the State was informed that the Court had not forwarded it the documentation sent by the Prosecutor General's Office, because this documentation had been sent to the Court by the State itself, through its Ministry of Foreign Affairs, entity accredited by the State to receive official communications and notifications in relation to this case. Nevertheless, the documentation from the Prosecutor General's Office was sent to the State and it was granted an additional time frame until July 26, 2013, to present its observations on that documentation specifically and, by a note of July 30, 2013, this term was extended until August 13, 2013, at the State's request.⁷³ The State forwarded its observations on the documentation presented by the Prosecutor General's Office on August 13, 2013.

69. Accordingly, the helpful documents and information that were requested more than once at different procedural moments, namely by the Order of the President of the Court of December 19, 2012, during the public hearing held in this case, and following this, are incorporated into the body of evidence of the case in application of Article 58 of the Rules of

Zapata v. Colombia, paras. 8 and 10; *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006 Series C No. 148, paras. 42, 44, 51 and 52, and *Case of the Pueblo Bello Massacre v. Colombia. Merits*. Judgment of January 31, 2006. Series C No. 140, para. 31 and 32.

⁶⁹ Cf. *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, paras. 12 and 13; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, paras. 10, 11 and 13; *Case of Furlán and family members v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, paras. 10 and 11; *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244, paras. 9 and 10; *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, para. 7; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 9; *Case of Mendoza et al. v. Argentina*, para. 12; *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 12; *Case of Atala Rizzo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, paras. 7, 11 and 12; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, paras. 13 and 41; *Case of the Barrios family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 8 and 9; *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, paras. 14 and 15, and *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011. Series C No. 223, paras. 12 and 13.

⁷⁰ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 11; *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*, paras. 24, 25, 28 and 35; *Case of Uzcátegui et al. v. Venezuela*, paras. 12 and 13; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala* paras. 10; 11, and 13; *Case of Furlán and family members v. Argentina*, paras. 10 and 11; *Case of Suárez Peralta v. Ecuador*, paras. 9 and 10, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, para. 7.

⁷¹ Cf. *Case of Vélez Restrepo and family members v. Colombia*, para. 68; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 7; *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, para. 7; *Case of Suárez Peralta v. Ecuador*, para. 9; *Case of Mendoza et al. v. Argentina*, para. 12; *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, para. 12; *Case of Atala Rizzo and daughters v. Chile. Merits, reparations and costs*, paras. 7, 11 and 12; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, paras. 13 and 41; *Case of the Barrios family v. Venezuela*, paras. 8 and 9; *Case of Furlán and family members v. Argentina*, paras. 10 and 11, and *Case of Díaz Peña v. Venezuela*, para. 9.

⁷² Cf. *Case of Manuel Cepeda Vargas v. Colombia*, paras. 9 and 12; *Case of Escué Zapata v. Colombia*, paras. 8 and 10; *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, paras. 42, 44, 51 and 52; *Case of the Pueblo Bello Massacre v. Colombia. Merits*, paras. 31 and 32; *Case of Atala Rizzo and daughters v. Chile. Merits, reparations and costs*, paras. 7, 11 and 12; *Case of Mohamed v. Argentina*, paras. 14 and 15; *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs*, paras. 12 and 13; *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, paras. 10 and 11, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*, para. 16.

⁷³ Cf. Notes of the Secretariat CDH-12,573/226 of July 12, 2013, and CDH-12,573/230 of July 30, 2013.

Procedure and will be assessed together with the whole body of evidence, as pertinent to this case, and taking into consideration the observations presented by the Commission and the parties in exercise of the right of defense.

B.4. Criteria for assessing the evidence relating to testimonies or “voluntary confessions” received in the context of domestic judicial proceedings

70. Lastly, the Court takes note that, as observed by the parties and the Court itself during the public hearing, several of the voluntary confessions of members of armed groups (paramilitaries) received in the proceedings before the ordinary criminal justice system and as “candidates” for demobilization under the special Justice and Peace proceedings in Colombia, which were provided as evidence in this case, may eventually contradict or be inconsistent with other versions given by these same deponents and/or candidates. In this regard, the State indicated that this “represents an enormous difficulty for the State and for justice; which one should be considered valid? And, on what basis? In another judicial proceeding the contradicting statements by the witnesses would have been rejected or would simply have invalidated the testimony.”⁷⁴

71. Regarding the validity of the contradictory statements and confessions, the Court considers that the different versions of these deponents must be analyzed taking into consideration whether any measures have been taken to verify to what extent they are true. In addition, the said statements must be compared with the whole body of evidence, the level of description of the events and, in particular, in the case of confessions by paramilitaries, the *modus operandi* and elements of context relating to the paramilitary group to which the individual in question belonged must be taken into consideration.

72. The Colombian Supreme Court of Justice has considered that the judicial authority must make an “analysis” that compares the different testimonies to determine the congruent elements that may lead to the truth.⁷⁵ Thus, it has been understood that the fact that a witness retracts his initial assertions does not, in itself, nullify the content of what was said initially. That version is not delegitimized on this basis alone, but rather it will depend on the analysis of the evidence as a whole – subject at all times to the system of rational persuasion – in order to establish when the deponent spoke the truth and when he did not.⁷⁶

73. Regarding the special Justice and Peace proceedings, the Supreme Court indicated “that the simple retraction of a deponent for the prosecution cannot inexorably lead to the rejection of his previous statements”;⁷⁷ hence, the judge must make an analysis to compare the statements prior to the retraction. In addition, it indicated that the members of illegal organized groups are involved in criminal acts that, since they are perpetrated repeatedly, cease to be

⁷⁴ Cf. The State’s final oral arguments before the Inter-American Court during the public hearing on February 12, 2013.

⁷⁵ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 10547, Judgment of June 15, 1999, and proceeding 34653, Judgment of September 27, 2010: “The Court has said that retracting does not *per se* invalidate what the repentant witness has asserted in his previous statements, nor does it make what he says in his new interventions indisputable. [...] It is necessary to make a comparative analysis, but never by elimination, in order to establish in which of the differing and opposing versions the witnesses told the truth. The individual who retracts what he has said must have a reason for doing so, which may normally consist in a qualm of conscience that makes him narrate things as they happened, or in his own or another’s interest that leads him to deny what he perceived. Thus, retracting can only be admitted when it responds to a spontaneous and sincere act of the individual who does so and provided that the latest version provided by the individual is credible and in keeping with the other facts verified in the proceedings.” See also Supreme Court of Justice, Criminal Cassation Chamber, proceeding 28835, Judgment of September 15, 2010.

⁷⁶ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 23438, Judgment of July 2, 2008; proceeding 21939, Judgment of September 29, 2004, and proceeding 31579, Judgment of July 27, 2009.

⁷⁷ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, Case file 32672, Judgment of December 3, 2009.

extraordinary acts and become routine events that can easily be confused, forgotten or mixed up with other events with similar characteristics,⁷⁸ and this requires a much more flexible analysis of the testimony.⁷⁹ In this regard, the Supreme Court indicated that, in such cases, the judicial authorities will be required to make a value judgment in order to determine the coherence of the different voluntary confessions, the level of description of the events and, specifically in the case of the Justice and Peace proceedings, to compare the *modus operandi* of the armed group to determine whether it corresponds to what the candidate has said.⁸⁰

74. In addition, regarding measures to verify the assertions in the confessions, the Court takes note of Colombia's domestic law⁸¹ and also that the Colombian Supreme Court of Justice has made several rulings indicating that before, during and after the voluntary confessions of the candidates for the benefits of Law 975, or the "Justice and Peace Law," the Prosecutor General's Office must verify the truth and completeness of what the demobilized individual has narrated.⁸² The Supreme Court also indicated that the "voluntary confession cannot be restricted to the factual universe chosen and narrated by the justiciable, but, to the contrary, must be expanded to the one that the prosecutor constructs with the information collected, with which he will question, interrogate and investigate the demobilized individual in order to verify the truth and completeness of his statement."⁸³

75. Similarly, as regards the special Justice and Peace proceeding, Miguel Samper Strauss, the deponent for information purposes proposed by the State, indicated that "it is [...] evident that the versions of the candidates cannot constitute all the procedural elements of [...] the investigation and subsequent charges that the Prosecution must bring. [...] It is a judicial proceeding and, as in the case of any investigation, the other elements [that the investigation must take into account, may come from] the information collected by the Prosecutor General's Office, after seven years of the Justice and Peace process. [This] is very important in order to understand those macro-criminal patterns that must be clarified, patterns that, according to the

⁷⁸ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 32805, Judgment of February 23, 2010.

⁷⁹ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 32022, Judgment of September 21, 2009.

⁸⁰ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 31150, Judgment of May 12, 2009: "Under the Justice and Peace Law, the foregoing conclusion allows asserting that when the prosecutor makes an accusation, or even brings charges, based on the confession of the candidate, he must provide the judge with pertinent, effective and thorough arguments based on which the judge can consider the probative value, taking into account the internal and external coherence of the narration, the perceived purpose, its level of description and, since these are acts that were committed because and while the candidate was a member of the illegal armed group, verify whether the *modus operandi* corresponds to the pattern of the crimes of the group and, to this end, he must examine the reason for the victimization and, if appropriate, its systematic nature."

⁸¹ Article 17 of Law 975 of 2005, the Justice and Peace Law, establishes that the "confession provided by the demobilized individual and the other measures taken in the demobilization process, shall be made immediately available to the National Justice and Peace Prosecutors Unit so that the delegated prosecutor and the Judicial Police assigned to the case, [...] may prepare and implement the methodological program to initiate the investigation, verify the truth of the information provided, and clarify the patterns and contexts of criminality and victimization." Similarly, article 4 of Decree 4760 of 2005 stipulates that "[a]fter receiving the list of candidates sent by the national Government, the competent delegate prosecutor who has been assigned, before receiving the voluntary confession, shall take the measures required to discover the real truth, to identify the masterminds, perpetrators and accomplices, to clarify the punishable conduct that has been committed, to identify assets, sources of funding and weapons of the respective illegal organized armed groups, as well as cross-checking information, and other measures aimed at complying with the provisions of articles 15 and 16 of Law 975 of 2005 during the reasonable time required to do this, which may not exceed the six months' period established in article 325 of Law 600 of 2000 [...]."

⁸² Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 31539, Judgment of July 31; proceeding 32022, September 21, 2009, and proceeding 34423, judgment of August 23, 2011. See also, proceeding 30775, Sentencia of February 18, 2009, proceeding 29992, Judgment of July 28, 2008, and proceeding 32022, Judgment of September 21, 2009. See also, Statement by Javier Ciurlizza, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 11, 2013.

⁸³ Colombian Supreme Court of Justice, Criminal Cassation Chamber, proceeding 34423, August 23, 2011.

recent reform of Justice and Peace process, must be clarified and, therefore, the statements of other individuals who have been demobilized, and even external sources, provide very important sources for comparison purposes.”⁸⁴

76. Based on the foregoing, the Court notes that the statements of several paramilitaries were subject to verification by the Prosecutor General's Office before, during and after they were made. In particular, as a result of the systematic analysis of these voluntary confessions, comparing them with the rest of the evidence, and the verification activities at different procedural opportunities, the Prosecutor General's Office has prepared a “dossier” on the activities of the “Elmer Cárdenas bloc” that contains the following information: (a) Operation Genesis and the history of the Elmer Cárdenas bloc; (b) the different structure of the “bloc” identified by the prosecutor; (c) the structures handed over by Fredy Rendón with information on the military evolution of the “bloc” and the areas of activities; (d) the connection of the group to law enforcement personnel, the material used, the groups combated, the site of the camps and of the bases, and other information; (e) the chain of command, statutes and orders; (f) the bloc's demobilization process; (g) the weapons used by the bloc, and (h) its ideology.⁸⁵ These same confessions were also weighed, analyzed and compared with other evidence of a similar and a different nature in the context of the first instance judgment of the Eighth Criminal Court of the Bogota Special Circuit of August 23, 2012 (*infra* para. 179).

77. Furthermore, regarding how the evidence examined in domestic proceedings is assessed, as indicated in other cases with regard to Colombia, the Court reiterates that it is not a criminal court and that, as a general rule, it is not for the Court to decide on the authenticity of the evidence produced in a domestic investigation when this has been considered valid in the competent judicial jurisdiction,⁸⁶ unless violation of the guarantees of due process in obtaining, investigating, verifying or assessing the said evidence can be verified or proved directly.

78. In this case, the Court finds that the criteria used by both the domestic courts and the Prosecutor General's Office to analyze the truth of the evidence provided by the statements of the demobilized paramilitaries are pertinent for the Court to make its own assessment of that evidence. Thus, the criteria used by the Colombian Supreme Court of Justice in order to assess confessions that are contradictory, inconsistent or that vary over time may be usefully and reasonably applied to the specific circumstances of this case in order to determine the judicial truth.

79. For these reasons, this Court considers that the voluntary confessions of the demobilized paramilitaries have probative value, taking into consideration, above all, the statements that have already been investigated, verified, compared with other evidence, classified and assessed by both the Prosecutor General's Office and the Colombian criminal justice system and, also, taking into account the other elements of evidence and of context to determine which of the versions is most consistent with the rest of the evidence presented.

C. Admission of the statements of the presumed victims, the expert witnesses, a deponent for information purposes, and a witness

80. The Court finds it pertinent to admit the statements and opinions provided during the public hearing and by affidavit, to the extent that they are in keeping with the purpose defined

⁸⁴ Cf. Statement of Miguel Samper, deponent for information purposes proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁸⁵ Cf. The Prosecutor General's Office, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44465, 45444, 45250, 45490, 45513, 45459, 45238 and ff.).

⁸⁶ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 201.

by the President in the Order requiring them⁸⁷ and with the purpose of this case, and they will be assessed in the corresponding chapter, together with the other elements of the body of evidence. In accordance with this Court's case law, the statements made by the presumed victims cannot be assessed alone, but must be examined with all the other evidence in the proceedings, because they are useful insofar as they can provide additional information on the presumed violations and their consequences.⁸⁸

VIII FACTS

81. The factual framework includes different events, some of which took place in the context of or during the military operation known as "Genesis" conducted in February 1997, as well as incursions by paramilitary groups or members of the United Self-Defense Forces of Colombia (hereinafter also "AUC") carried out at the same or almost the same time, in the Cacarica river basin (also called Operation "Cacarica"). Forced displacements of Afro-descendant communities who had inhabited the territories of the Cacarica river basin ancestrally occurred in this context. The Commission and the parties have also referred to the living conditions faced by the groups that were displaced during the following years, including their safety, and their return to the Cacarica territories, as well as to other events related to the dispossession and exploitation of the natural resources and territories of these communities by private companies. Lastly, the parties have referred to events related to the investigations and to the different judicial proceedings conducted in relation to the events.

82. The following facts of the case will be described in this chapter: (a) the geographical and demographic context and the situation of public order in the Urabá Chocóano region; (b) the background to Operations "Génesis" and "Cacarica"; (c) the implementation of Operations "Génesis" and "Cacarica"; (d) the death of Marino López; (e) the alleged forced displacement; (f) the events following the displacement; (g) the return of those displaced and the presumed continuation of the acts of violence against those who had been displaced from Cacarica; (h) the alleged illegal logging on the collective territory, and (i) the jurisdictional proceedings.

A. Context

A.1. Geographical location

83. The Urabá region is located in the extreme northwest of Colombia and constitutes the point where Central and South America meet. The departments of Chocó, Antioquia and Córdoba converge in this region, which is a forested area with abundant vegetation and numerous rivers which make it a zone of great biodiversity.⁸⁹ The natural border between the departments of Chocó and Antioquia is the Atrato River. The department of Antioquia (Urabá) is

⁸⁷ The purpose of all these statements is established in the Order of the President of the Court of December 19, 2012, first and fifth operative paragraphs.

⁸⁸ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Suárez Peralta v. Ecuador*, para. 38.

⁸⁹ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 229). See also: Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

composed of 11 municipalities.⁹⁰ Meanwhile, the department of Chocó (Urabá or Darién) consists of four municipalities.⁹¹

84. The Chocó department (Urabá) is also characterized by its diversity and water resources, and the fact that it is a tropical rainforest.⁹² The main access route is the Atrato River and its tributaries, the Truandó, Cacarica, Jiguamiandó, Salaquí and Jarapetó Rivers,⁹³ even though, as the State underlined, without this being contested, there is also land access by a highway in poor conditions that communicates Riosucio with the district of Belén de Bajirá and the municipality of Chigorodó.⁹⁴ In addition, this region, which surrounds the Gulf of Urabá and the border with Panama, is a strategic corridor for access to both the Pacific and the Atlantic Oceans.⁹⁵

A.2. Demographics

85. The Cacarica river basin is inhabited mainly by descendants of Africans originally brought over and subjected to slavery in the Americas during colonial times. These people gradually organized themselves into communities and settled along the rivers, in villages or in settlements dependent on the rivers, creeks and streams.⁹⁶ As indicated by the representatives and not contested by the State, these people settled the Cacarica river basin in the process of seeking land following the abolition of slavery in the mid-nineteenth century, at which time a process of migration started from the southern Pacific side of Colombia towards the southern part of Chocó,⁹⁷ then to Medio and Bajo Atrato.⁹⁸ Thus, by the mid-twentieth century, the settlement of the department by the Afro-descendant people was firmly established.⁹⁹

⁹⁰ Namely: Apartadó, Carepa, Chigorodó, Necoclí, San Juan de Urabá, San Pedro de Urabá, Turbo, Arboletes, Murindó, Mutatá and Vigía del Fuerte.

⁹¹ Namely: Acandí, Unguía, Riosucio and Carmen del Darién. Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 229).

⁹² Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 229). See also: Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁹³ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230). Also, Testimony of Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁹⁴ Cf. Answering brief of the State (merits file, folio 500).

⁹⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230) and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44466 to 44468). See also: Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court during the hearing on February 12, 2013.

⁹⁶ Cf. Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the hearing on February 12, 2013. See also, Ombudsman's Office, Decision No. 39 of the Ombudsman of June 2, 2005 (evidence file, folios 47464 and 47465).

⁹⁷ Cf. "Operation Genesis Report" cited in the affidavit of January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15412). See also: Anthropological appraisal provided in the testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013 (evidence file, folios 16474 and 16475).

⁹⁸ Bajo Atrato is located in the north of the department of Chocó, and the municipality of Riosucio can also be found here.

⁹⁹ Cf. Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the hearing on February 12, 2013. Also, Ombudsman's Office, Decision No. 39 of the Ombudsman of June 2, 2005 (evidence file, folio 47465).

86. The Community Council of the Communities of the Cacarica River basin is composed of the following communities: Balsagira, Balsita, Bocachica, Bogota, Bocas del Limón, Peranchito, Quebrada Bonita, Quebrada del Medio, La Honda, Las Mercedes Barranquilla, La Virginia Perancho, Las Pajas, Montañita Cirilo, Puente América, Puerto Berlín, Puerto Nuevo, San Higinio, San José de Balsa, Santa Lucía, Teguerre Medio, Varsovia, Vijao Cacarica and Villa Hermosa la Raya, all of them located in the jurisdiction of the municipality of Riosucio, Chocó department, between the left bank of the Atrato River and the right bank of the Cacarica River.¹⁰⁰

87. The region's economy is basically that of self-sufficiency, and depends on growing subsistence crops ("*pancoger*"), artisanal fishing, hunting and logging.¹⁰¹ As regards the living conditions of the inhabitants of the area – predominantly Afro-descendants¹⁰² – many of their basic needs are not met.¹⁰³ In this regard, the Court takes note that the Colombian Constitutional Court¹⁰⁴ and the Ombudsman's Office,¹⁰⁵ together with other public entities,¹⁰⁶ inter-governmental agencies involved in the international protection of human rights,¹⁰⁷ and

¹⁰⁰ Cf. Colombian Agrarian Reform Institute. Decision No. 841 of April 26, 1999 (evidence file, folio 47058), and Colombian Constitutional Court, Judgment T-955 of October 17, 2003 (evidence file, folio 134). Similarly, Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013, as well as the anthropological appraisal provided during the hearing (evidence file, folios 16477 and 16485).

¹⁰¹ Cf. Anthropological appraisal of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013, and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44471 to 44473).

¹⁰² Cf. Anthropological appraisal provided in the testimony of Jesús Alfonso Flórez López expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013 (evidence file, folios 16473 and 16475).

¹⁰³ Cf. Affidavit prepared on January 31, 2013, by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413). Similarly, see Colombian Constitutional Court, proceedings No. 005 of January 26, 2009 (evidence file, folios 15382 to 15474). In this regard, documents of the National Council for Economic and Social Policy, National Planning Department (hereinafter "CONPES"), outline positive actions to provide attention to the said communities: No. 3618 "Guidelines for the income-generation policy for the communities living in extreme poverty and/or displacement" (evidence file, folios 44587 to 44589); No. 3169 "Policies for the Afro-Colombian population" (evidence file, folios 44859 and 44860); No. 3180 "Program for the reconstruction and sustainable development of the Urabá Antioqueño and Chocóano and the Bajo and Medio Atrato. Extension to CONPES No. 3169" (evidence file, folios 44879 to 44890); No. 3310, "Affirmative action policy for Colombia's black population" (evidence file, folios 44901, 44915, 44922 to 44933); No. 3660, "Policy to promote equal opportunities for the Black, Afro-Colombian, Palenquera and Raizal peoples" (evidence file, folios 44992 to 45015). Also, Prosecutor General's Office, proceeding: Marino López Mena, File 2332, volume 1 (evidence file, folio 17194).

¹⁰⁴ Cf. Colombian Constitutional Court. Proceeding 005 of January 26, 2009 (evidence file, folio 1681 and ff.). Also, see Colombian Constitutional Court, Judgments T-422 of September 10, 1996; T-586 of July 31, 2007, and proceeding No. 222 of June 17, 2009, cited in the testimony provided by affidavit by Olga Amparo Sánchez Gómez, expert witness proposed by the representatives (evidence file, folio 15196).

¹⁰⁵ Cf. Ombudsman's Office and others, Public communiqué on the verification of abuses committed by the Self-Defense Forces and the FARC against the indigenous communities of Antioquia, Saldaña, Chocó, September 16, 2005 (evidence file, folio 48112); Institutional Commission of the Ombudsman's Office to the Jiguamiando River Basin, Report, March 12-17, 2003 (evidence file, 48413, 48416 and 48422); Ministry of the Interior and of Justice, Social Action, Public Prosecution Service, and the Ombudsman's Office. Project to provide attention to high-risk communities: Bajo Atrato and Urabá Concertation Committee (evidence file, folio 50003 to 50014); Ombudsman's Office. Decision No. 51 of the Ombudsman, Human rights in the subregions of Bajo Atrato and the Darién - Chocó department, Bogota DC, December 14, 2007 (evidence file, folio 47981), and Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, Bogota, October 2002 (evidence file, folios 229 and 230).

¹⁰⁶ Cf. CONPES documents: No. 3169 of May 23, 2002 (evidence file, folios 45916 to 45921); No. 3310 of September 20, 2004 (evidence file, folios 45959, 45961, and 45962), No. 3660 of May 10, 2010 (evidence file, folios 46005), and No. 3616 of September 28, 2009 (evidence file, folio 44541).

¹⁰⁷ Cf. "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia," sixty-first session, 28 February 2005, E/CN.4/2005/10 (evidence file, folios 2332 and 2333). Similarly, United Nations, Economic and Social Council: Racism, racial discrimination, xenophobia and all forms of discrimination.

non-governmental organizations¹⁰⁸ have referred to the context of marginalization, vulnerability and segregation that these communities continue to endure, despite the social assistance measures implemented by the State. This was acknowledged by the State's expert witness, María Paulina Leguizamón Zarate, who referred to the "Operation Genesis report," which indicates that the region of the Chocóano and Antioqueño Urabá is characterized by "continued abandonment by the State in terms of social assistance, not only as regards education, where the coverage is among the lowest in the country, but also as regards health and, above all, sustainable development."¹⁰⁹ The same report emphasized that Chocó department "has been characterized by having a corrupt public administration, not only because of the diversion of public funds, but also owing to the award of permits or the corruption of public officials by logging companies, the illegal expansion of palm plantations and, in general, all kinds of mining exploitation."¹¹⁰

A.3. Public order situation and acts of violence against the Cacarica communities

88. The Urabá region is of major geostrategic importance in the armed conflict, in particular for the illegal armed groups, given its geographical location and its biological wealth (*supra* paras. 83 and 84). This geographical location is favorable for the international trafficking of arms, chemical products, and illegal drugs. It is also a strategic territory from a military perspective because it serves as a hiding place and is a corridor to the southwest and the Bajo Cauca Antioqueño, the Sinú Valley, and the Nudo de Paramillo and a corridor to the western part of Antioquia. Consequently, "for more than three decades, the Urabá has been an epicenter of the armed conflict, which has extended to nearby areas, especially to Chocó."¹¹¹

89. Regarding the situation of violence in the Urabá region, it is an undisputed fact that the illegal armed groups have sought out this region as a corridor; that the banks of its rivers are used by the illegal armed organizations to commit crimes, and that the Darién Chocóano is used by these groups for trafficking arms and illegal drugs.¹¹² In addition, the State indicated, and

Report by Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and all forms of discrimination. Mission to Colombia, 23 February 2004, para. 34. See also: Committee for the Elimination of Racial Discrimination (CERD). Examination of report submitted by the States parties under article 9 of the Convention. Concluding observations on Colombia, 28 August 2009, para. 13; United Nations Development Programme (UNDP), Report "Afro-Colombians and the Millennium Development Goals" 20 November 2011, and the Third report of the Inter-American Commission on Human Rights, "Human Rights in Colombia," Chapter XI: The Rights of Black Communities, Bogota 1999.

¹⁰⁸ Cf. Observatory on Racial Discrimination [Universidad de los Andes]: "*El Derecho a no ser Discriminado. Primer Enfoque sobre Discriminación Racial and Derechos sobre la Población Afrocolombiana (version resumida)*"; Ediciones Unidas; Bogota, 2008 (evidence file, folios 8269 to 8272, 8255, 8271, 8282, 8283, 8284 and 828). See also, Secretariado Nacional de Pastoral Social, CARITAS Colombia "*Situación de guerra y violencia en el Departamento del Chocó 1996-2002*"; Bogota; November 2002 (evidence file, folios 8762, 8763, 8768 and 8769).

¹⁰⁹ "Operation Genesis Report" cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413).

¹¹⁰ Cf. "Operation Genesis Report" cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413). Also, Ombudsman's Office. Decision of the Ombudsman No. 39 of June 2, 2005 (evidence file, folio 47465).

¹¹¹ Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44475).

¹¹² Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230). See also: Ombudsman's Office, Delegate Ombudsman for risk assessment of the civilian population as a result of the armed conflict, Early Warning System (EWS), risk assessment No. 044-05, September 13, 2005 (evidence file, folios 51152 to 51155); Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44470); "Operation Genesis Report" cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413); Testimony of witness Germán David Castro Díaz, proposed by the State, before the Inter-American Court of Human Rights during the hearing on February 11, 2013.

the parties did not contest this, that, in the southwestern part of the municipality of Riosucio, the illegal armed groups are cutting down native species extensively, in order to plant coca, oil palms and bananas.

90. With regard to the illegal armed groups that were active in the region, the evidence presented by the Prosecutor General's Office indicates that the guerrilla appeared during the 1960s with the entry of the FARC, the People's Liberation Army (hereinafter also "EPL"¹¹³) and the National Liberation Army (hereinafter "ELN"). Meanwhile, the paramilitary groups entered the area starting in 1988 and their presence was "reinforced" after 1994 by the Peasant Self-Defense Forces of Córdoba and Urabá (hereinafter "ACCU").¹¹⁴ The evidence indicates that the Self-Defense Forces present in the region were composed of former members of the EPL.¹¹⁵ These groups "have fought to maintain their presence, expanding or contracting according to the rhythm and circumstances of the armed conflict, as well as to the alliances and rivalries based on the illegal activities and strategic advantages."¹¹⁶

91. In 1996 and 1997, the illegal armed groups that were involved in criminal activities in the Urabá were self-defense groups (or paramilitaries); in other words, "blocs" or "groups"¹¹⁷ of the ACCU¹¹⁸ and members of the guerrilla, especially the FARC 57th Front.¹¹⁹ It was also around

¹¹³ The evidence indicates that the EPL decided to demobilize in 1991, although not all the organization followed this procedure; rather, one sector of this guerrilla movement broke away from the rest of the organization and withdrew from the peace process. The latter formed the EPL dissident faction, while the rest of their former companions, that is those that signed the peace agreement and demobilized, formed the political movement "Hope, Peace and Liberty" which began an important electoral campaign against another leftist party, the Patriotic Union, in the Urabá region.

¹¹⁴ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44473). See also. Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11, 2013.

¹¹⁵ The Prosecutor General's Office indicated in the dossier on the Elmer Cárdenas bloc that, following this, given the new scenario, the FARC and its Bolivarian militia, as well as the EPL dissidents, began to attack and murder those who had reintegrated and the grass-roots supporters of the new political movement, as a way of undermining its electoral potential (according to the Prosecutor General's Office, 632 trade unionists were murdered between 1991 and 2003 and 66% of those murders are attributed to the FARC), because the "Hope" political group was competing for leftist votes with the Patriotic Union. Later, the former EPL fighters decided to form the so-called "*Comandos Populares*", an armed structure composed mainly of those who had reintegrated, and they began to openly combat the guerrilla who continued to be active in the area. Subsequently, in 1995, according to the witness Colonel Germán Castro, some members of the *Comandos Populares* demobilized, while others "ended up joining another illegal armed group such as the illegal self-defense forces." The witness added that they joined "the ranks of these illegal self-defense forces and they knew [...] this whole area, [...] and they also knew the territory of the inhabitants who were there amid this conflict." Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44489 and 44490). See also, Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court during the public hearing on February 11, 2013.

¹¹⁶ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44475).

¹¹⁷ Cf. According to the information presented by the Prosecutor General's Office, the same bloc had different names over time, and a different composition and alliances. For example, from May to September 1995, the paramilitary groups that were active in the region were called the "*Guelengues*"; from October 1995 to December 1996, they were "the No. 70 self-defense group"; from December 1996 to December 1997, they were the "Chocó Bloc," and then, following the death of Elmer Cárdenas in December 1997, they began to call themselves the "Elmer Cárdenas Bloc of the Peasant Self-Defense Forces." See, Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Military Evolution 01 and Genesis (evidence file, folios 45250 to 45267, and 44508 to 44529). Also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, Defendant: Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14804, 14805 and 14808).

¹¹⁸ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230). See also: "Battle orders," "Public report of the 17th Brigade on the situation of human rights in the Urabá Antioqueño dated July 31, 1997," and "Operation Genesis Report" cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15407, 15408 and 15414); Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit. Indictment in proceeding No. 2332 against retired General Rito Alejo del Río of December 26, 2008 (evidence file, folios, 8861 and 8862), and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44478). Also,

this time that the armed conflict was “extended” and intensified in the Urabá region.¹²⁰ According to the evidence in the case file, this exacerbation of the conflict in the region was related, among other reasons, “to large-scale military operations that included dropping bombs and that were aimed against the 57th and 34th Fronts, especially in the northern part of the department, in the municipalities of Riosucio, Ungula and Acandí,”¹²¹ and with “the intense and ferocious armed incursion” and subsequent consolidation of the paramilitary groups.¹²²

92. The historical presence of the guerrilla in the region¹²³ was opposed and disputed by the paramilitary groups, most of who came from Urabá Antioqueño. Particularly, as of the mid-1990s, when its first activities commenced, carrying out a “pacification” process “that is still remembered owing to the wave of terror and the destruction of the social tissue and the community organization.”¹²⁴ As of 1996, the paramilitary units of the AUC began to advance upriver, using threats, intimidation, persecution, economic blockades, and murders that affected several communities of the municipality of Riosucio, the Cacarica River and Curvaradó.¹²⁵ Little by little the actions of the illegal armed groups expanded, “causing massive displacements, that resulted in social chaos in this region.”¹²⁶ In addition, “loyalties” emerged

Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, Defendant: Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

¹¹⁹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, Defendant: Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

¹²⁰ Cf. “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15414), and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44478). See also, Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013, and Ombudsman's Office. Decision No. 39 of the Ombudsman of June 2, 2005 (evidence file, folio 47465).

¹²¹ Cf. “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15414).

¹²² Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44476): “In the second half of the 1990s, more exactly on December 20, 1996, in the municipality of Riosucio Chocó, there was an intense and ferocious armed raid by a paramilitary group; after this, the presence of the self-defense forces was strengthened in this part of the department and, with time, it forced the subversive elements to retreat to the mountainous and jungle areas.” The same dossier adds that, as of 1996, the paramilitary group that was present in the region began an offensive in order to take control of the Atrato. The members of the self-defense forces began to advance upriver from the town of Riosucio, near Urabá, committing selective murders, intimidating and threatening the local people. The most significant combat between these two groups took place in the village of Bojayá in May 2002.”

¹²³ Up until this time, the FARC guerrilla had “used the department as a kind of strategic rearguard area, because they could supply themselves from there since it was near the sea, and retreat there when necessary. Other groups such as the Guevarist Revolutionary Army (ERG) and the National Liberation Army (ELN) have followed the example of the FARC.” Ombudsman's Office, report “*Chocó, Víctima del Conflicto and Codicia*” cited by the Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44477 and 44478). See also, “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15414 and 15415).

¹²⁴ Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44478). See also, Technical Investigation Corps, Report No. 116 of November 9, 2009, to the 122nd and 48th Regional Prosecutors delegated to the Justice and Peace judges, proceeding 2332 Marino López Mena (evidence file, folio 17199).

¹²⁵ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folios 44477 and 44478).

¹²⁶ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44476). Regarding the displacement, see also: “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15414 and 15415). Also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

as a necessary condition for the inhabitants of the area to remain there, with no place for neutrality.¹²⁷

93. Regarding the above, the Ombudsman's Office indicated that, "since 1996, the communities of the Bajo Atrato have been subjected to continuing pressure by the FARC and the AUC [United Self-Defense Forces of Colombia]. It would appear that the organizational processes of the communities, before and after the forced displacement, impaired the latter's ability to control the population." The Office added that the "the intention of the communities to maintain their autonomy in the face of these armed agents limited the possibility of the guerrilla and the self-defense forces using them,"¹²⁸ and that, also, "the latter consider this intention a threat to their plan to control the territory and to establish ways of exploiting the territory that are in keeping with their funding needs."¹²⁹ In this situation, the presence of illegal armed agents, added "to the historical absence of the State in certain parts of the region," permitted the dominant armed group to try and impose lines of conduct on the population as they saw fit.¹³⁰

94. As indicated, the Afro-Colombian population of the region had to support the presence on its territory of different illegal armed groups, accompanied by threats, murders and disappearances, which led to their displacement.¹³¹ Also, as revealed by the body of evidence, during the second half of the 1990s, the region was the scenario of large-scale forced displacements. According to the information provided by the Ombudsman's Office, in 1997, more than 15,000 people were displaced from the region of Bajo Atrato Chocóano.¹³² In 2002, the mass displacement increased and led to a sustained humanitarian crisis in the Bajo Atrato, unprecedented in the history of the country.¹³³ In addition, the continued violation of human

¹²⁷ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44476). See also, "Operation Genesis Report" cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15414 and 15415). Also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

¹²⁸ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230).

¹²⁹ Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230). See also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

¹³⁰ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44478). The document indicates, for example, that the armed groups obliged the inhabitants of the place to work certain hours or pay for vaccines.

¹³¹ Cf. CONPES document No. 3180, July 15, 2002 (evidence file, folio 45947) and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Genesis (evidence file, folio 44478). See also: Testimony of Jesús Alfonso Flórez López, expert witness proposed by the representatives of the presumed victims, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013. More generally: CONPES document No. 2924, May 28, 1997 (evidence file, folio 45564): "in recent years, the armed conflict and the actions of the illegal armed groups have resulted in a growing and alarming individual and mass displacement of the population." Also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

¹³² Cf. Ombudsman's Office, Press communiqué No. 773 of October 8, 2002 (evidence file, folio 51399); Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folios 228 to 230), and Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

¹³³ Cf. Ombudsman's Office, Press communiqué No. 773 of October 8, 2002 (evidence file, folio 51399). The document adds that "[t]he food security of the peasant, black and indigenous communities has been severely affected; morbidity has increased owing to the insufficient and sporadic health care services combined with the environmental conditions of the region and the increase in malnutrition."

rights and international humanitarian law by the armed groups has prevented the completion of the return of the communities displaced from Bajo Atrato.¹³⁴

B. Background to Operations “Genesis” and “Cacarica”

Uncontested facts

95. According to the Ombudsman's Office, “as of mid-1996, rumors began to circulate that the paramilitaries intended to take control of Riosucio.”¹³⁵ In the context of this paramilitary advance, on October 6 that year, the ACCU had murdered several peasants in the community of Brisas de la Virgen, located between the departments of Chocó and Antioquia. During the attack, the paramilitaries indicated that they would soon take control of Riosucio.¹³⁶ In addition, the evidence reveals, that in the context of the events, paramilitary groups imposed an economic and food blockade on the region, affecting its inhabitants.¹³⁷

96. With the increase in the threat of a paramilitary attack, the FARC guerrillas who were active in the region established two control points on the Atrato River. One was in the community of Puente América, to the north of Riosucio, and the other to the south of Riosucio, in Domingodó, where the guerrilla confiscated food and fuel.¹³⁸ As indicated by the Ombudsman's Office, the Secretary of Government of Riosucio was shot and killed in November 1996, while the Treasury Secretary disappeared without any explanation. In addition, in December 1996, there were confrontations between paramilitaries and the guerrilla very near Riosucio. Then, bit by bit, it became known that an armed group had entered the town and taken several public officials, including the Municipal Treasurer, without any knowledge of their whereabouts even today.¹³⁹ Also, the evidence shows that, on December 20, 1996, a paramilitary group had entered Riosucio and had announced that it would continue on into the area of Salaquí.¹⁴⁰

¹³⁴ Cf. Ombudsman's Office, Press communiqué 773 of October 8, 2002 (evidence file, folio 51399). The document adds that: “[t]he economic and social reconstruction of this region, one of the most affected by the armed conflict in the country, has been constantly interrupted by the blocking of the passage of food from Turbo and Riosucio to the rural communities of the Bajo Atrato, the rupture of the marketing routes for the agricultural products of the zone and, in general, by the increasing isolation to which the armed groups have subjected the communities.”

¹³⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230): “[...] on December 20, 1996, in the municipality of Riosucio, Chocó, there was an intense and ferocious armed raid by a paramilitary group; as of that date, the presence of the Self-Defense Forces was consolidated in that part of the department; [...] then the group, together with eight more men was sent to raid the department of Chocó with bloodshed and arson in the context of the so-called Operation “Taking of Riosucio” carried out on December 20, 1996, by men from the different ACCU groups that operated in Urabá, achieving the territorial, political and social control of that Chocóano municipality.” Prosecutor General's Office, Justice and Peace Unit, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Genesis: armed structure, chain of command (evidence file, folios 44520, and 45283 to 45284).

¹³⁶ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230).

¹³⁷ Cf. Testimony of J.B.V.P. and C.M.R., before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit of December 11 and 19, 2002 (evidence file, folios 619 and 620, and 613); Ombudsman's Office, Complaint No. 9745030 of March 1, 1997, addressed to the Ombudsman by the Head of the Apartadó Regional Office (evidence file, folio 50731), and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Genesis: Context immediately before it was planned (evidence file, folio 44478).

¹³⁸ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folios 230 and 231).

¹³⁹ Cf. Ombudsman's Office, Press communiqué No. 127 of January 11, 1997 (evidence file, folio 51392), and voluntary confession of Luis Muentes Mendoza. Minute by minute of the voluntary confessions of the candidates from the Elmer Cárdenas Bloc concerning Operation Genesis, Cacarica; Medellín, April 30, 2010 (evidence file, folio 19211).

¹⁴⁰ Cf. Testimony of Fredy Rendón Herrera before the Eighth Criminal Court of the Bogota Special Circuit of May 12, 2011, in proceeding No. 2009-063 against General Rito Alejo del Río for the murder of Marino López Mena (evidence file, video recording 20:00 and 25:00, folio 8734). See also, Technical Investigation Corps, Report No. 116 of November

97. It is clear from the evidence¹⁴¹ and from some expert opinions that the FARC 57th Front was present in the area of the Caño Seco village and the banks of the Salaquí River, as well as in the general area of the district of Bajirá. Specifically, the expert witness offered by the State, Colonel María Paulina Leguizamón Zarate, indicated, without this being challenged by the representatives or the Commission, that the criminal actions of this FARC front “affected the inhabitants of the region, because it perpetrated kidnappings, murders, and other types of activities [...] against the civilian population and members of the Armed Forces.”¹⁴² In addition, there was information that, on January 16, 1997, 10 marines were kidnapped when their patrol was attacked in the place known as El Rota;¹⁴³ and also that, on January 9, 1997, the municipality of Riosucio was seized by the guerrilla.¹⁴⁴ Furthermore, there was also information that, around the same time, the Armed Forces were present in the area in which the events of the instant case occurred, mainly in the region of Urabá, with Units of the Navy, the Urabá Police Command, and the Army's 17th Brigade, headquartered in Carepa, Antioquia;¹⁴⁵ the latter under the command of General Rito Alejo del Río Rojas.¹⁴⁶

Disputed facts

98. According to an initial version of the facts, based on evidence in the case file provided by State institutions and other sources, “towards the end of 1996, the Armed Forces [...] launched, together with [...] the AUC, a campaign to eradicate the guerrilla forces from the region of Bajo Atrato,” in order “to regain control of the territory where the guerrilla were present in the Cacarica river basin,”¹⁴⁷ and this campaign tried to prevent the guerrilla forces from obtaining support from the civilian population, especially that of the communities that lived near the tributaries of the Atrato River, areas where, traditionally, the FARC maintained a strong presence. According to that version of the events, the Army had initially placed controls on the Atrato River imposing strict limits on the quantity of products that the residents of these communities could transport. The economic blockade lasted several months and had been followed by a series of joint operations by the Army and the paramilitaries, which resulted in the massive displacement of many communities of the municipality of Riosucio, in the region of Bajo Atrato.¹⁴⁸

9, 2009, to the 122nd and 48th Regional Prosecutors delegated to the Justice and Peace judges (evidence file, folios 17198 and 17199).

¹⁴¹ Cf. Colombian Military Forces, National Army, 17th Brigade, Report of March 6, 1997 (evidence file, folio 5529).

¹⁴² “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15422).

¹⁴³ Cf. “Operation Genesis Report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15422) and Colombian Military Forces, National Army, 17th Brigade Operations Order No. 004 “Genesis”, February 1997 (evidence file, folio 1406).

¹⁴⁴ Cf. Ombudsman's Office, Press communiqué No. 127 of January 11, 1997 (evidence file, folio 51392), and Patrol report prepared by Major M. P. T. M., Commander of Special Forces Battalion No. 1,” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15423).

¹⁴⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 230). Also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

¹⁴⁶ Cf. Public Prosecution Service, Appeal for review No. 30510 filed before the Supreme Court of Justice, Criminal Cassation Chamber on February 18, 2009 (evidence file, folio 1065). Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14804).

¹⁴⁷ Amnesty International, Colombia. Return to hope - forcibly displaced communities of Urabá and Medio Atrato region, June 2000 (evidence file, folio 1157).

¹⁴⁸ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14805). See also Voluntary confession of Fredy Rendón of April 30, 2010, in case

99. Regarding the background to Operation Genesis, the State has explained that it was a mechanism to combat and neutralize the FARC 57th Front, which had committed a series of crimes at the start of 1997; in particular, the attack on the inhabitants of Riosucio on January 9,¹⁴⁹ the kidnapping of 10 marines on January 16,¹⁵⁰ the kidnapping of four foreigners on February 7,¹⁵¹ and the kidnapping of some children.¹⁵²

C. “Operation Genesis” and “Operation Cacarica”

Undisputed facts

100. As indicated, the counterinsurgency operation known as “Operation Genesis” was planned to take place between February 24 and 27, 1997.¹⁵³ According to Operations Order No. 004 Genesis of the Military Forces of Colombia, the Army, 17th Brigade, its purpose was to attack the guerrilla in the general area of the Salaquí and the Truandó Rivers, in order to capture and/or neutralize the members of the José María Córdoba Bloc and the FARC 57th Front and to liberate the 10 kidnapped marines¹⁵⁴ (*supra* para. 97). Based on this goal, eight objectives were established with their respective coordinates.¹⁵⁵ The intelligence report attached to Operations Order No. 004 Genesis of the Military Forces of Colombia, the Army, 17th Brigade,¹⁵⁶ indicates:

file 2332 (evidence file, video recording 10:36 and 11:27); Testimony of Fredy Rendón during the trial of General Rito Alejo del Río for the murder of Marino López, of May 12, 2011, Bogotá (evidence file, video recording 23:00 to 29:00 folio 8734), and Amnesty International, Colombia. Return to hope - forcibly displaced communities of Urabá and Medio Atrato region, June 2000 (evidence file, folio 1157). Affidavits dated January 21, 201, by: Jerónimo Pérez, Jhon Jairo Mena and Ángel Nelis Palacios (evidence file, folio 14923, 14982 and 14993); Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Genesis. Context immediately before it was planned (evidence file, folios 44478); Ombudsman's Office, Complaint 9745030 of March 1, 1997, addressed to the Ombudsman by the Head of the Apartadó Regional Office (evidence file, folio 50735).

¹⁴⁹ Cf. Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013, and “Intelligence report” cited in the affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15432).

¹⁵⁰ Cf. Colombian Military Forces, National Army, 17th Brigade: Operations Order No. 004 “Genesis,” February 1997, Reports of March 6 and March 20, 1997 (evidence file, folios 1406, 5528 and 5532). See also the testimony of Colonel Luis Emilio Cardozo Santamaría and Colonel Germán Castro, expert witness and witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11 and 12, 2013.

¹⁵¹ Cf. Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State and Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11 and 12, 2013.

¹⁵² Cf. Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11, 2013.

¹⁵³ Cf. Colombian Military Forces, National Army, 17th Brigade, Report of March 6, 1997 (evidence file, folios 5529 and 5530). See also: Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231); Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁵⁴ Cf. Colombian Military Forces, National Army, 17th Brigade Operations Order No. 004 “Genesis,” and Report of March 6, 1997 (evidence file, folios 1406 and 5529), and testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁵⁵ Cf. Colombian Military Forces, National Army, 17th Brigade. Intelligence report attached to Operations Order No. 004 “Genesis,” and appendix on “Plan of objectives” (evidence file, folios 5515 and 5519) and Military Forces of Colombia, General Command, Head of Joint Military Intelligence and Counterintelligence, Military analysis of the terrain dated May 29, 2009, Annex (evidence file, folio 1267).

¹⁵⁶ Cf. Colombian Military Forces, National Army, 17th Brigade. Intelligence report attached to Operations Order No. 004 “Genesis” of February 1997 (evidence file, folios 5514 to 5519).

Objective 1: Tamboral;¹⁵⁷ Objective 2: La Loma (de Salaquí) and Playa Bonita;¹⁵⁸ Objective 3: Regadero;¹⁵⁹ Objective 4: Caño Seco and Bocas de Guineo;¹⁶⁰ Objective 5: Teguerre;¹⁶¹ Objective 6: Puente América;¹⁶² Objective 7: La Nueva,¹⁶³ and Objective 8: Clavellino.¹⁶⁴ In addition, as part of the operation, orders were given to organize control posts and blockades at the mouths of the Salaquí, Truandó and Domingodó Rivers.¹⁶⁵ The foregoing would be executed in three stages with the support of H-212 and H-500 helicopters and attacks by soldiers brought in by helicopter¹⁶⁶ and would include Alfa, Beta and Charlie support missions. “Alfa” missions consist in machine-gunning; “Beta” missions consist in launching bombs, and “Charlie” missions consist in launching guided rockets.¹⁶⁷

101. As described, on February 24, 1997, the Air Force, together with troops of the Army’s 17th Brigade, began the military operation.¹⁶⁸ Although the operation was originally planned to take place only during the last week of February, the maneuvers to occupy and secure the area, as well as the pursuit of and confrontation with subversive groups continued after that time.¹⁶⁹ The facts presented by the State with regard to the operation that are not disputed are: (i) that all the objectives, except for No. 6 Puente América, were attacked by the armed forces;¹⁷⁰ (ii)

¹⁵⁷ According to the Intelligence report, 300 guerrillas and two N.N. (Pájaro and Marleny) were at this location. Intelligence report attached to Operations Order No. 004 “Genesis” (evidence file, folio 5515).

¹⁵⁸ According to the Intelligence report, 20 guerrillas were at La Loma and another 250 at Playa Bonita. Intelligence report attached to Operations Order No. 004 “Genesis” (evidence file, folio 5515).

¹⁵⁹ According to the Intelligence report, here there was an open space and a safe haven for the majority of the group, with 30 guerrillas.

¹⁶⁰ According to the Intelligence report, N.N. (Víctor Tirado) with 350 guerrillas were located in the sector of Caño Seco and Bocas de Guineo.

¹⁶¹ According to the Intelligence report 80 guerrillas were at this location

¹⁶² According to the Intelligence report 90 guerrillas under the orders of N.N. (alias Roberto) were at this location.

¹⁶³ According to the Intelligence report 70 guerrillas were at this location.

¹⁶⁴ According to the Intelligence report 350 guerrillas and the leader of the María Córdoba Bloc were at this location.

¹⁶⁵ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808), Colombian Military Forces, National Army, 17th Brigade Operations Order No. 004 “Genesis” of February 1997, and the intelligence report in annex (evidence file, folios 1407 and 5516).

¹⁶⁶ Stage I corresponded to the helicopter-assisted attack on Objective No. 1 and, in parallel, Objective No. 2 would be neutralized with BETA support; subsequently, the No. 35 Counterinsurgency Battalion would carry out a helicopter-assisted attack with waves of 80 men each on Objective No. 4, Caño Seco and Guineo. Stage II would be implemented when Objectives 1 and 4 had been secured and Objective No. 2 had been neutralized; it would be carried out by a helicopter-assisted attack on Objectives Nos. 3 and 5. Stage III would be initiated once Objectives Nos. 1, 2, 3, 4 and 5 had been secured, when No. 35 Counterinsurgency Battalion would take control of the whole of the Salaquí River, and on receiving orders, No. 1 Special Forces Battalion would conduct a helicopter-assisted attack on Objectives Nos. 8 and 7. Colombian Military Forces, National Army, 17th Brigade, Operations Order No. 004 “Genesis” of February 1997 (evidence file, folios 1406 to 1412). See also Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15432).

¹⁶⁷ Cf. Testimony of Luis Emilio Cardozo Santamaría, expert witness proposed by the State during the public hearing on February 12, 2013.

¹⁶⁸ Cf. Military Forces of Colombia, 17th Brigade, Report of March 20, 1997 (evidence file, folios 5532 and 5533) and Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁶⁹ Cf. Colombian Military Forces, National Army, 17th Brigade, Reports of March 6 and 10, 1997 (evidence file, folios 5529, 5530 and 5533). See also, Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15445 to 15448) and Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013. Also, Military Forces of Colombia, General Command, Head of Joint Military Intelligence and Counterintelligence, Military analysis of the terrain of May 29, 2009, Annex (evidence file, folio 1267).

¹⁷⁰ According to the information in the case file, the seven objectives that were attacked were: Objective 2: Tamboral; Objective 2: La Loma; Objective 3: Regadero; Objective 4: Bocas de Guineo; Objective 5: Teguerre;

that it was executed jointly by the Colombian Army, the Navy, which controlled the river and maritime part of the area,¹⁷¹ and Air Force (hereinafter also “FAC”), including also the Special Rural Forces, which provided air support to the mission; (iii) that the Operation culminated in the liberation of two of the kidnapped foreigners, and with the recovery of the bodies of two kidnapped foreigners,¹⁷² and (iv) that, during the operation, the Armed Forces was able to gather intelligence information, they had neutralized “the corridor” used by FARC towards the border with Panama, and had been able to “recover the area” occupied by the 57th Front along the Salaquí River. The latter was affirmed by the State’s expert witness, Luis E. Cardoso, and was not disputed.¹⁷³

102. It is an undisputed fact that, with the excuse of carrying out a “cleansing operation” that would guarantee the elimination of the presence of FARC guerrillas in the area, as of February 26, 1997, members of the AUC of the Chocó Bloc, among others, entered the settlements of Bijao, Limón and Puente América and, using different means, such as bullets, grenades, and arson, forced the inhabitants to evacuate these areas.¹⁷⁴

Disputed facts

103. With regard to the other events related to Operation Genesis, the Court notes that the documentation and the evidence given in the testimonies in the case file reveal that there are two versions of what happened. According to one version, the Colombian Air Force bombed the

Objective 7: La Nueva, and Objective 8: Clavellino; and it was only Objective 6 (Puente América) that was not attacked by the Armed Forces. Colombian Military Forces, National Army, 17th Brigade, Report of March 6, 1997 (evidence file, folios 5528 and 5529), and Colombian Military Forces, National Army, 17th Brigade, Report of March 20, 1997 (evidence file, folios 5532 and 5534). See also, Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness offered by the State (evidence file, folios 15445 to 15448) and Testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁷¹ Cf. Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15444, 15453, and 15458) and Colombian Military Forces, National Army, 17th Brigade, Report of March 6, 1997 (evidence file, folio 5529).

¹⁷² Cf. Prosecutor General’s Office, Medellín Regional Prosecutors Office, Case file 22,855: Kidnapping (evidence file, folio 18929). See also Colombian Military Forces, National Army, 17th Brigade, Reports of March 6 and 20, 1997 (evidence file, folios 5530 and 5533). Similarly, see affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15460) and the testimony of Colonel Germán Castro and Jesús Alfonso Flórez López, witness and expert witness, respectively, proposed by the State, during the public hearing on February 11 and 12, 2013.

¹⁷³ Cf. Testimony of Colonel Luis Emilio Cardozo Santamaría, Expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁷⁴ Cf. Regarding the incursion of the paramilitaries in the areas described, see: Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14803); statements made before the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit: Cruz Manuel Ramírez, J.B.V.P. and M.B.S. on December 11 and 19, 2002 (evidence file, folios 641, 612, 620 and 642), and the voluntary confessions of Franklin Hernandez Segura, Luis Muentes Mendoza and Diego Luis Hinestroza Moreno in Collective voluntary confessions on Operation Genesis – Cacarica of the candidates of the Elmer Cárdenas Bloc before the Prosecutor General’s Office, Justice and Peace Unit, on April 29, 2010, April 22 and April 2, 2008 (evidence file, folio 19213, 19248 and 19246). Regarding the acts of violence used by the paramilitaries that have been mentioned, the following can be consulted: the statements of Luis Aristarco Hinestroza and M.A.C.M. before the Prosecutor General’s Office, Human Rights and International Humanitarian Law Unit of April 13, 2007, and December 11, 2002 (evidence file, folios 17338, 630, 631 and 632); Preliminary hearing to bring charges in the proceedings against Diego Luis Hinestroza Moreno and Luis Muentes Mendoza for the murder of Marino López Mena on May 30, 2008 (evidence file, video recording 23:43 to 25:00, folio 1472 and recording 43:00 to 44:30, folio 1403), the statements of J.V.R. and J.A.Q. cited in the indictment of Rito Alejo del Río Rojas by the 14th Prosecutor of the Human Rights and International Humanitarian Law Unit, proceeding 2332 of September 12, 2008 (evidence file, folios 1498 and 1502), and the preliminary arguments presented before the Prosecutor General in proceeding 5767, by L.J.M., legal representative of Father J.G, in which he requested that charges be brought against retired General Rito Alejo del Río Rojas for crimes against humanity (evidence file, folio 1286).

communities of the Salaquí and Cacarica river valleys,¹⁷⁵ which resulted in the displacement of peasants from the Cacarica, Jiguamiandó, Curbaradó, Domingodó, Truandó and Salaquí river valleys, among others.¹⁷⁶ According to this version, the paramilitaries participated in the operation, entered the area through Cacarica and carried out joint or coordinated actions with the Army.¹⁷⁷

104. Consequently, in parallel to Operation Genesis, at the end of February 1997, a group of paramilitaries composed of members of the Chocó Group and the Pedro Ponte Group had advanced from the Los Katios National Park along the Cacarica River, passing through Bijao and other communities located in the basin of that river, to finally arrive at the Salaquí and Truandó Rivers, at exactly the same time as Operation Genesis was being executed. That operation is known as "Operation Cacarica."¹⁷⁸

105. According to this version of the events, during "Operation Cacarica" and, as mentioned, the paramilitaries entered the settlement of Puente América¹⁷⁹ where they set up a road block where they searched the people and then "sent them" to Turbo, telling them that, once there, "they would be received by the Police and taken to the Turbo Sports Arena, and that is what

¹⁷⁵ Cf. Testimony of C.M.R., before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 612); Testimony of J.B.V.P., before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 19, 2002 (evidence file, folio 620). Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). Similarly, the voluntary confessions, statements and testimony provided before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, by J.B.V.P. on December 19, 2002; Diego Luis Hinestroza Moreno on August 29, 2008; Luis Aristarco Hinestrosa on April 13, 2007; J.A.Q. on March 3, 2007, and November 4, 2008; William Manuel Soto Salcedo on April 29, 2010, and December 5, 2011, and A.M.V. on September 7, 2005 (evidence file, folios 619 and ff.; 1463 and ff.; 17341, 17388, 17539, 17899, 17702 and 17457). See also, voluntary confessions and testimony of Fredy Rendón Herrera on October 24, 2007, November 7, 2007, March 13, 2009, and April 29, 2010, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit (evidence file, folios 18373, 17636, 17365, 17509, 18374 and 17917).

¹⁷⁶ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also, Prosecutor General's Office, proceeding Marino López Mena, case file 2332, volume 1 (evidence file, folio 17199), Voluntary confession of Edwin Alberto Romero Cano of March 24, 2011, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit (evidence file, video "Subclips candidates 2), and Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14808 and 14810).

¹⁷⁷ Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012, and Testimony of Fredy Rendón of May 12, 2011 (evidence file, folios 14806, 14808, 14809, 14810). See also, statements and voluntary confessions made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit of: C.A.F. Alvarez on May 8, 2008, L.A.C.L. on September 7, 2005, William Manuel Soto Salcedo on December 5, 2011 and April 29, 2010, Julio Cesar Arce Graciano on April 28, 2010, Edwin Alberto Romero Cano on March 24, 2011, Alberto García Sevilla on August 29, 2008, Franklin Hernandez Seguro on August 6, 2008, and Fredy Rendón on March 13, 2009, and April 28, 2010 (evidence file, folios 1471, 18396, 17460, 17700, 17701, 17895, 17896, 17541, 17874 and 17877 and Video "Subclips candidates 2. Operation Genesis. Voluntary confession Edwin Alberto Romero Cano recorded at 4:47, Alberto García Sevilla, Franklin Hernandez Seguro recorded at 0:19 and 2:10 and Fredy Rendón recorded at 3:03 and 4:00). The Prosecutor General's Office, Powerpoint presentation and Organizational structure "Operation Cacarica" (evidence file, folios 19263 and 45234).

¹⁷⁸ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808). See also the statements and voluntary confessions made before the Prosecutor General's Office by Fredy Rendón Herrera on August 15, 2008, March 13, 2009, and April 29, 2010; William Manuel Soto Salcedo on April 9, 2008, and April 29, 2010; Diego Luis Hinestroza Moreno and Alberto Gacía Sevilla on April 29, 2010; Luis Muentes Mendoza on April 22, 2008, and Rubén Dario Rendón Blanquicet on July 17, 2008 (evidence file, folios 43324, 17914 to 17917, 19236 to 19244, 19177 to 19179, 19182 and 19183, 19185, 19187 to 19189, 19248, 19249 and 19251 and Video "Subclips candidates 2. Operation Genesis. Voluntary confession Fredy Rendón). Lastly, see also The Prosecutor General's Office, Powerpoint presentation and organizational structure "Operation Cacarica" (evidence file, folios 19255 to 19259, 19263 and 45234).

¹⁷⁹ Cf. Preliminary arguments presented by L.J.M., legal representative of Father J.G., before the Prosecutor General in proceedings 5767 against retired General Rito Alejo del Río Rojas por crimes against humanity (evidence file, folio 1285).

happened.”¹⁸⁰ Both the ACCU members and Major Salomón told the leaders of the Afro-descendant communities that they had to evacuate and go to Turbo, because there everything would be coordinated, and the leaders returned to their communities.¹⁸¹ According to the testimony of the community leaders, they went to talk to the armed agents and had to pass through three security cordons: the first set up by the ACCU, the second by soldiers from the 17th Brigade, and a third consisting of members of the Self-Defense Forces and the 17th Brigade.¹⁸² In addition, some of the evidence provided indicates that the execution of “Operation Genesis” was simultaneous,¹⁸³ in “collaboration with,”¹⁸⁴ and coordinated with the action of the “Chocó Bloc” paramilitary group.¹⁸⁵

106. However, the State has presented a second version, according to which, during Operation Genesis, the Armed Forces only attacked seven of the eight objectives named above (*supra* para. 101), which were located in the Salaquí area.¹⁸⁶ On this basis, it indicated that the distance between the Cacarica river basin (where the paramilitary were and where Marino López Mena was murdered) and the Salaquí River, “is approximately 40 kilometers of virgin forest, with numerous geographical faults (including water courses, mountains, thick vegetation, swamps and flooding) [and that] it would require approximately six days for men carrying weapons and equipment to cover this distance.”¹⁸⁷ Thus, the State maintains that the Armed Forces never entered the Cacarica river basin,¹⁸⁸ because the Commander gave the order not to

¹⁸⁰ Cf. Testimony of J.B.V.P., before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit of December 19, 2002 (evidence file, folio 620). See also, the statements of M.A.C.M. and C.M.R. The Prosecutor General's Office Human Rights and International Humanitarian Law Unit of December 11, 2002 (evidence file, folio 631 and 612).

¹⁸¹ Cf. Testimony of J.A.Q. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit of October 8, 2002 (evidence file, folios 1527 and 1528) and voluntary confession made by Fredy Rendón en Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Fiscalía 48 Justice and Peace Unit, Delegada, Medellín. (evidence file, folio 18412).

¹⁸² Cf. Testimony of J.A.Q., the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit of October 8, 2002 (evidence file, folios 1527 and 17537).

¹⁸³ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808). See also: The Prosecutor General's Office, document “Operation Cacarica” (evidence file, folios 19255 to 19259), The Prosecutor General's Office, Powerpoint presentation “Operation Cacarica” (evidence file, folio 19253), and The Prosecutor General's Office, National Justice and Peace Prosecutors Unit, presentation: organizational structure Operation Cacarica (evidence file, folio 45234).

¹⁸⁴ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14807).

¹⁸⁵ In this regard, the former paramilitary leader Fredy Rendón Herrera, alias “El Alemán” testified before the Prosecutor General that it should be “clarified that [they] operated in that area until around 1997 without the presence of the Colombian Army until an operation was conducted in the area included between the Los Katíos National Park and the Truandó River where the Army conducted an operation that at the time was called Operation Genesis and that troops belonging to the Chocó Bloc who were on the Cacarica River took part, in coordination with some middle-level commanders in the area, in the rescue of some foreigners and the recovery of other deceased foreigners; this was done in conjunction with the Army [...]” Statement made by Fredy Rendón Herrera before the Prosecutor General's Office, Unit of Prosecutors delegated to the Superior Court of the Judicial District of Medellín on August 15, 2008. See also: Voluntary confession Fredy Rendón Herrera, March 13, 2009 (minute 10:45:10) (evidence file, folio 18377); Voluntary confession of Fredy Rendón Herrera, March 13, 2009 (minute 01:00 of video No. 5); Fredy Rendón Herrera, statements of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 29, 2010 (evidence file, folio 17914).

¹⁸⁶ Cf. Colombian Military Forces, National Army, 17th Brigade, Reports of March 6 and 20, 1997 (evidence file, folios 5529, 5530, 5532 to 5534).

¹⁸⁷ Cf. Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15450 and 15451). Similarly, see Testimony of Luis Emilio Cardozo Santamaría, expert witness proposed by the State before the Inter-American Court of Human Rights, during the public hearing on February 12, 2013.

¹⁸⁸ Cf. Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, 15450 to 15456)

attack Objective No. 6 “Puente América” as, at that time, he did not have the capacity to do so satisfactorily and the other objectives were more relevant for the operation’s purposes.¹⁸⁹ The foregoing, allows the State to affirm that the Armed Forces did not have the collaboration and support of the paramilitary groups and, above all, that they did not act in coordination with them during the execution of Operation Genesis.¹⁹⁰

D. The death of Marino López

107. On February 26, 1997, approximately 60 paramilitaries from the ACCU “Chocó” Bloc entered the settlement of Bijao,¹⁹¹ located in basin of the Cacarica River, Chocó department, Colombia. According to the evidence, they fired their rifles and launched grenades at the roofs of the houses, and sacked the homes, including that of Marino López. Following these acts, the paramilitaries assembled the inhabitants and ordered them to abandon the settlement.¹⁹²

¹⁸⁹ According to Luis Emilio Cardozo Santamaría: the “objectives were in the center, to the north and to the south; the difficulties of executing that operation [were] very significant, because there were insufficient resources to support and sustain an operation at that time; most of the resources had been provided by the Command, because the Brigade did not have the capacity; [...] what the intelligence tells the Commander is one thing, and what the Commander can do with the resources at hand is another. The Commander must prioritize objectives and take the decision: I’ll go north to attack, based on information about a group there, or I’ll go south and attack because the leader of the bloc is there, because military logic indicates that I must go after the leader of the bloc who is the one organizing all the criminal activities in the area. [...] Therefore, he goes and takes the decision, and has the power to do so, to attack the objective to the south and not the objective to the north, Puente América.” Testimony of Colonel Luis Emilio Cardozo Santamaría, Expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

¹⁹⁰ Cf. Voluntary confession made by Fredy Rendón Herrera before the Prosecutor General’s Office on October 24, 2007 (evidence file, folios 19229 and 19230) and statements of C.M.R., before the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit of December 11 and 19, 2002 (evidence file, folios 612, 619 and 600).

¹⁹¹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14803). Also, Video of the charges brought in the hearing on the partial accusation against Diego Luis Hinestroza Moreno, Medellín Justice and Peace Courts, May 30, 2008 (minutes 23:43 to 25:00 of the video) (evidence file, folio 1472). See also: Video of the charges brought in the hearing on the partial accusation against Luis Muentes Mendoza, 2008, Medellín Justice and Peace Courts (minutes 43:00 to 44:30 of the video) (evidence file, folio 1403); Voluntary confession of William Manuel Soto Salcedo before the Justice and Peace prosecutor on July 9, 2008 (minutes 01:20 to 02:20 of the video) (evidence file, folio 1533) Voluntary confession of Alberto García Sevilla before the Justice and Peace prosecutor on October 28, 2008 (minute 0:38 of the second video) (evidence file, folio 1548): “There were 60 of us and 60 of us were from the Self-Defense Forces”; voluntary confession of Diego Luis Hinestroza Moreno before the Justice and Peace prosecutor on April 2, 2008 (minutes 0:50 of the video) (evidence file, folio 19246): “We went there [in Bijao]; a fight too place there inside the village”; voluntary confession of Freddy Rendón Herrera before the Justice and Peace prosecutor on March 13, 2009 (minutes 00:00 to 00:40 of the video) (evidence file, folio 19231); Voluntary confession of Luis Muentes Mendoza before the Justice and Peace prosecutor on April 22, 2008 (minute 14:34) (evidence file, folio 19248); Testimony of J.V.R., cited in the decision on the legal situation of Rito Alejo del Río Rojas by the 14th Prosecutor of the Human Rights and International Humanitarian Law Unit, case file 2332, of September 12, 2008 (evidence file, folio 1498); Testimony of J.A.Q., community leader, cited in the decision on the legal situation of Rito Alejo del Río Rojas by the 14th Prosecutor of the National Human Rights and International Humanitarian Law Unit, case file 2332, of September 12, 2008 (evidence file, folio 1502) and Testimony of Emedelia Palacios, widow of Marino López, before the 21st Special Prosecutor of the National Human Rights and International Humanitarian Law Unit of February 10, 2007, in Medellín (evidence file, folios 8925 and 8926).

¹⁹² In particular, they had been threatened by suggesting that groups that were even more cruel would be coming behind the paramilitaries, “to devour the people.” Cf. Video of the charges brought in the hearing on the partial accusation against Diego Luis Hinestroza Moreno of May 30, 2008, before the Medellín Justice and Peace Court (evidence file, video recording 27:50 to 28:16 folio 1472). See also: charges against Luis Muentes Mendoza, 2008 (evidence file, video recording 46:50 to 47:00 folio 1403); Testimony of J.V.R. cited in the decision bringing charges against Rito Alejo del Río. Proceeding 2332, of the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit, for the murder of Marino López Mena (evidence file, folio 8872) and Testimony of Luis Aristarco Hinestroza on April 13, 2007, before the Human Rights Unit cited in Report No. 116 of the Technical Investigation Corps of November 9, 2009, to the 122nd and 48th Regional Prosecutors delegated to the Justice and Peace judges (evidence file, folios 17183 and 17266). See also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14803).

108. Similarly, it is an undisputed fact that Marino López was executed on February 27, 1997, in the settlement of Bijao¹⁹³ by members of the Chocó Bloc paramilitary group, who accused him of being a member of the guerrilla.¹⁹⁴ Specifically, the evidence reveals that aliases “Manito” and “Diablito” obliged him to get some coconuts down from a palm tree in order to drink the coconut water, and then kicked him. After pushing him to the bank of the river, one of the paramilitaries swung his machete at Marino López’s neck, but hit his shoulder. Injured, Marino López threw himself into the river to escape, but the men told him that “it would be worse for him if he went,” and he therefore tried to return. However, while he was on the river’s edge, “Manito” decapitated him with his machete.¹⁹⁵ The State indicated that it did not seek to question this fact, because “there was no doubt that Marino López had been murdered by paramilitaries.”¹⁹⁶

109. Some of the testimonies indicate, and the State has not contested this, that after killing him, the authors proceeded to dismember his body. They also indicated that the paramilitaries played with his head as if it had been a football,¹⁹⁷ although the domestic courts have not given this total credence,¹⁹⁸ and several paramilitaries deny this last act.¹⁹⁹

¹⁹³ Cf. Colombian Constitutional Court Judgment T-955 of 2003 of October 17, 2003 (evidence file, folio 134); Ombudsman’s Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also, testimony of Colonel Luis Emilio Cardozo Santamaría, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013. Prosecutor General’s Office, slides presented during the hearing to bring charges against Fredy Rendón Herrera before the Justice and Peace Court (evidence file, folio 8647); Testimony of J.V.R. cited by the 26th Prosecutor delegated to the Bogota Superior Court which confirmed in second instance the injunction in proceedings No. 2332 against Rito Alejo del Rio Rojas, of February 24, 2009 (evidence file, folio 7705); Testimony of Emedelia Palacios before the 21st Prosecutor of the National Human Rights and International Humanitarian Law Unit on February 10, 2007, in Medellín (evidence file, folio 8926); statement of Hebert Veloza Garcia before the Prosecutor General’s Office of the National Human Rights Unit on October 10 and 15, 2008 (evidence file, folio 1206); Testimony of Fredy Rendón of November 7, 2007, before the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit (evidence file, folio 17363), and Decision on the legal situation of Luis Muentes Mendoza and others, case file 2332 of September 12, 2008 (evidence file, folio 17424) and charges brought by the Prosecutor General’s Office against Luis Muentes Mendoza (evidence file, video indictment hearing, recording 46:00 to 47:00, folio 1403).

¹⁹⁴ Cf. Statements of J.E.V.R. Romaña and Héctor Enrique Ramírez Valenzuela cited in the indictment decision in proceedings No. 2332 against Rito Alejo del Rio by the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit, for the murder of Marino López Mena (evidence file, folio 8867). See also: Affidavit prepared by Henry Angulo Martínez on January 21, 2013 (evidence file, folio 15073).

¹⁹⁵ Cf. Technical Investigation Corps (CTI), Report No. 169 of December 1, 2009. Results of the investigation, analysis of the act that has been confessed to, and voluntary confessions of Luis Hinestosa, Alberto García Sevilla and Rubén Darío Rendón Blanquiceth of April 22, May 8, and July 17, 2008 (evidence file, folios 17246, 17247, 17250 to 17255); Statements of Luis Aristarco Hinestrosa of April 13, 2007, before the National Human Rights and International Humanitarian Law Unit, and of Héctor Enrique Ramírez Valencia, cited in the decision on the legal situation of Wiliam Manuel Soto Salcedo of September 28, 2012, the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit (evidence file, folios 17339 to 17342 and 17817). See also voluntary statement and questioning of Fredy Rendón Herrera by the Prosecutor General’s Office, Human Rights and International Humanitarian Law Unit, and the Justice and Peace Prosecutor on October 8, 2008, and October 24, 2007 (evidence file, folios 1219, 1235 and 18372); Indictment of Diego Luis Hinestroza Moreno, on May 30, 2008 (evidence file, video recording: 24:55 to 27:00 folio 1492); and voluntary confessions before the Justice and Peace prosecutor by Diego William Manuel Soto Salcedo, Luis Hinestroza Moreno and Alberto García Sevilla of July 9, 2008, April 2 and October 28, 2008 (evidence file, video recording 20:00 to 22:00, folios 1533, 18392 and 1548).

¹⁹⁶ Cf. Answering brief, folio 540.

¹⁹⁷ Cf. Decision on the legal situation of Rito Alejo de Rio Rojas, case file 2332, of September 12, 2008 (evidence file, folio 1483); Preliminary arguments presented before the Prosecutor General’s Office in proceedings No. 5767, by L.J.M., legal representative of Father J.G. (evidence file, folio 1286); Indictment of Luis Muentes Mendoza by the Prosecutor General’s Office (evidence file, indictment hearing recording 46:00 to 47:00 folio 1403); Indictment of Diego Luis Hinestroza Moreno by the Prosecutor General’s Office (evidence file, indictment hearing recording 26:00 to 27:00, folio 1472), and affidavit prepared by John Jairo Mena Palacio on January 21, 2013 (evidence file, folio 14983).

¹⁹⁸ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14803).

110. Furthermore, the evidence reveals that these acts took place in the presence of members of the community.²⁰⁰ The remains of Marino López were found in the Cacarica River days later, but were only identified in February 2007, when it was possible to register his death officially.²⁰¹ Lastly, the probative elements, as well as the findings of the Eighth Criminal Court of the Bogota Special Circuit, show that military personnel were not involved in the events that occurred in Bijao and that resulted in the death of Marino López.²⁰²

E. The facts relating to the alleged forced displacement

E.1. The alleged forced displacement

Undisputed facts

111. It is an undisputed fact that, at the time of the events, various inhabitants of the Cacarica river valley, and of the Bajo Atrato in general,²⁰³ had to displace. As alleged by the Commission, and confirmed by the State, around 3,500 people were displaced and, of these, approximately 2,300 settled provisionally in the municipality of Turbo and in Bocas del Atrato, both in the department of Antioquia, Colombia, around 200 crossed the border into Panama, and the others went to other parts of Colombia.²⁰⁴

Disputed facts

112. Regarding the causes of the forced displacement, the Court notes that there are numerous versions of what happened. On the one hand, some probative elements indicate that the acts of violence that occurred in the context of Operation Genesis and the so-called Operation Cacarica, both the bombing²⁰⁵ and the death of Marino López,²⁰⁶ were what produced the forced displacement of the inhabitants of the Cacarica river basin.²⁰⁷

¹⁹⁹ Cf. Voluntary confession made by Luis Muentes Mendoza, before the Prosecutor General's Office, Justice and Peace Unit, on April 22, 2008 (evidence file, folio 1166), and voluntary confession of Fredy Rendón Herrera in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 29, 2010 (minutes 14:10 and 14:17) (evidence file, folios 19192 and 19193). Testimony of Hebert Veloza García before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on October 10, 2008 (evidence file, folios 1235 and 1236).

²⁰⁰ Cf. Testimony of J.A.Q. and J.V.R. Romaña cited by the 14th Prosecutor of the Human Rights and International Humanitarian Law Unit, in the decision on the legal situation of Rito Alejo del Río Rojas, file 2332, of September 12, 2008 (evidence file, folio 1502 and 1498). See also Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231) and statement made by Fredy Rendón Herrera before the Prosecutor General, Human Rights and International Humanitarian Law Unit, on October 8, 2008 (evidence file, folio 1235).

²⁰¹ Cf. Technical Investigation Corps, Probative photographic report of February 9, 2007 (evidence file, folio 17327). Charges against Luis Muentes Mendoza and Diego Luis Hinestroza Moreno of May 30, 2008 (evidence file video recording 50:30 and 27:18 to 27:48, folios 1403 and 1472).

²⁰² Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

²⁰³ Cf. Ombudsman's Office, Press communiqué No. 150 of March 31, 1997 (evidence file, folio 50739).

²⁰⁴ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also: Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 135).

²⁰⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also: United Nations, Report of the United Nations High Commissioner for Human Rights (UNHCHR) on the Office in Colombia, to the fifty-fourth session of the Commission on Human Rights, E/CN.4/1998/16, 9 March 1998 (evidence file, folio 752); Testimony of J.B.V.P. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit on December 19, 2002 (evidence file, folios 620); Testimony of Diego Luis Hinestroza Moreno on August 29, 2008, before the 14th Special Prosecutor, Human Rights and International Humanitarian Law Unit (evidence file, folio 17395); Voluntary confession of Diego Luis Hinestroza Moreno of April 2, 2008, in volume 9 of case file 2332 (evidence file, folio

113. According to this same version, other probative elements indicate that the displacement was premeditated and, in particular, that the members of the Army and the paramilitary groups perpetrated different acts of violence against the population,²⁰⁸ ordering the communities to leave their territory.²⁰⁹ Documents provided by the Ombudsman's Office record that the Riosucio spokesperson informed the Apartadó Sectional Office that "since [...] February 24, the inhabitants of these communities have been wandering around the hills seeking a way out to a safe place and that he had asked the Armed Forces to provide them with protection, and the

18391); Diego Luis Hinestroza Moreno, statements of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 29, 2010, in volume 8 of case file 2332 (evidence file, folio 17895); Voluntary confession made by Alberto García Sevilla on October 28, 2008 (evidence file, folio 18396); Voluntary confession made by Edwin Alberto Romero Cano on March 24, 2011 (DVD subclips candidates, voluntary confessions, case file 2332); Statement of Fredy Rendón provided on October 8, 2008, before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, Delegate Prosecutor, in volume 4 of case file 2332 (evidence file, folio 17478); Voluntary confession made by Edwin Alberto Romero Cano on March 24, 2011 (DVD subclips candidates voluntary confessions, case file 2332, minutes 00:45 and 03:18 of the video).

²⁰⁶ Cf. Preventive detention order for Fredy Rendón Herrera of March 9, 2011, in the proceedings against Rito Alejo del Río, in volume 7 of case file 2332 (evidence file, folio 17667). See also: Voluntary confession of Luis Muentes Mendoza, April 22, 2008, in volume 9 of case file 2332 (evidence file, folio 18350); Testimony of J.A.Q. of November 4, 2008, cited in the decision to joinder the proceedings against Rito Alejo del Río of December 26, 2008, in volume 5 of case file 2332 (evidence file, folio 17531), and Testimony of Diego Luis Hinestroza Moreno on August 29, 2008, before the 14th Special Prosecutor, Human Rights and International Humanitarian Law Unit (evidence file, folio 17395).

²⁰⁶ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-03-02-1997 (evidence file, folios 50731 and 50732). Also, on March 1, 1997, the Apartadó Regional Office of the Ombudsman's Office advised that it had learned, unofficially, of the bombing of the settlements of the civilian population in Salaquí, Balsitas and Truando. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-01-03-1997 (evidence file, folio 50734). See also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808); Voluntary confession of Franklin Hernandez Segura in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 29, 2010 (minute 11:17) (evidence file, folio 19213); Voluntary confession made by Diego Luis Hinestroza Moreno, before the Prosecutor General's Office, National Justice and Peace Unit on April 2, 2008 (minute 14:40) (evidence file, folio 19247); Voluntary confession made by Luis Muentes Mendoza before the Prosecutor General's Office, National Justice and Peace Unit on April 22, 2008 (minute 14:41) (evidence file, folio 19248).

²⁰⁷ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-03-023-1997 (evidence file, folios 50731 and 50732). Also, on March 1, 1997, the Apartadó Regional Office of the Ombudsman's Office advised that it had learned, unofficially, of the bombing of the settlements of the civilian population in Salaquí, Balsitas and Truando. Ombudsman's Office, See also, Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808); Voluntary confession of Franklin Hernandez Segura in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 29, 2010 (minute 11:17) (evidence file, folio 19213); Voluntary confession made by Diego Luis Hinestroza Moreno, before the Prosecutor General's Office, National Justice and Peace Unit, on April 2, 2008 (minute 14:40) (evidence file, folio 19247), and Voluntary confession made by Luis Muentes Mendoza before the Prosecutor General's Office, National Justice and Peace Unit, on April 22, 2008 (minute 14:41) (evidence file, folio 19248).

²⁰⁸ Cf. Indictment decision, 14th Special Prosecutor, Human Rights and International Humanitarian Law Unit, 26-12-2008, against Rito Alejo del Río for the murder of Marino López Mena, in case file 2332 (evidence file, folio 8872).

²⁰⁹ Cf. Eighth Criminal Court of the Bogota Special Circuit, case file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14791). See also: Testimony of M.A.C.M. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 630-631); Testimony of M.B.S. Serrano before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 641); Testimony of Luis Aristarco Hinestroza (step-brother of Marino López) on April 13, 2007, before the National Human Rights and International Humanitarian Law Unit (evidence file, folios 17338 to 17342); Testimony of J.E.V.R. Romaña on March 3, 2007, before the National Human Rights and International Humanitarian Law Unit in case file No. 2332 (evidence file, folio 17817); Complaint filed by Evangelina Mosquera Hinestroza on February 27, 1997, before the National Justice and Peace Prosecutors Unit informing of her displacement from Cacarica to Turbo. On that occasion, she made a statement (evidence file, folio 17725); Affidavits of January 21, 2013, prepared by Jerónimo Pérez Argumedo (evidence file, folio 14925); Ángel Nelis Palacios Quinto (evidence file, folio 14995); Eleodoro Sánchez Mosquera (evidence file, folio 15011); Henry Angulo Martínez (evidence file, folio 15073); Elvia Hinestroza Roa (evidence file, folio 15031); Ernestina Valencia Teherán (evidence file, folio 15022); and Francisco Frenio Fernandez Padilla (evidence file, folio 15055), and Affidavit prepared by Lucelis Bautista Pérez on January 23, 2013 (evidence file, folio 15003).

Commander of the Operation had advised him [...] that he would organize a support group, and that the situation of the peasants would be transitory, because shortly, in around five days, they would recover the areas and the peasants could return safely.”²¹⁰

114. Based on this first hypothesis, and as the Eighth Criminal Court of the Bogota Special Circuit indicated, the forced displacement of the inhabitants of Bijao, and the murder of Marino López, were not isolated acts, but formed part of a strategy to consolidate the paramilitary groups, to occupy territories, and to conquer a common enemy, owing to the way in which Marino López was “used” as a means or instrument to achieve a goal; and how it was executed in a predetermined context and with a specific objective: to cause terror in order to forcibly evict the non-combatant civilian population.²¹¹

115. However, a second version of what happened, supported by other documents and testimony, indicates that, contrary to what was indicated by the Commission and the representatives, the displacement of the inhabitants of the Cacarica river valley had been taking place since 1996 and continued during 1997 as a result of the action of the FARC.²¹² Regarding the guerrilla presence in the region, there is evidence that, after the FARC had taken Riosucio (*supra* para. 97), “launches and *pangas* that were travelling from Turbo to Riosucio were intercepted, and fuel, foodstuffs, and even drugs were stolen during several months [...] by the FARC 57th Front.”²¹³

116. Also, as indicated by the State and by some of the probative documents, during the days in which Operation Genesis was conducted, there had been fighting involving the FARC guerrilla beside the Cacarica River on the western bank of the Atrato River.²¹⁴ The representatives and the Commission did not contest this information.

²¹⁰ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-03-23-1997 (evidence file, folio 50733).

²¹¹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14810).

²¹² Cf. Statement of Fredy Rendón Herrera of November 7, 2007, before the National Human Rights and International Humanitarian Law Unit, in volume 2 of case file 2332 (evidence file, folio 17361); statement of Fredy Rendón Herrera provided on October 8, 2008, before the National Human Rights and International Humanitarian Law Unit, in volume 4 of case file 2332 (evidence file, folio 17476); Voluntary confession made by Fredy Rendón Herrera on March 13, 2009, in volume 9 of case file 2332 (evidence file, folio 18374); Fredy Rendón Herrera, Minute by minute of the Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 28, 2010, in volume 8 of case file 2332 (evidence file, folios 1872 to 1873); Fredy Rendón Herrera, statements of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis - Cacarica, April 29, 2010, Medellín, in volume 8 of case file 2332 (evidence file, folios 17906 and 17921); Testimony of Diego Luis Hinestroza Moreno of August 29, 2008, before the 14th Special Prosecutor, Human Rights and International Humanitarian Law Unit, in volume 2 of case file 2332 (evidence file, folio 17396); Voluntary confession made by Diego Luis Hinestroza Moreno on April 2, 2008, in volume 9 of case file 2332 (evidence file, folio 17249), and Julio Cesar Arce Graciano, Minute by minute of the Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 28, 2010, in volume 8 of case file 2332 (evidence file, folio 17891).

²¹³ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-03-03-1997 (evidence file, folio 50731).

²¹⁴ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-01-03-1997 (evidence file, folio 50734); Testimony of William Soto Salcedo, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, of April 29, 2010 (evidence file, folios 19178 and 19179); Testimony of Alberto García Sevilla, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis– Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, of April 29, 2010 (evidence file, folio 19187); Testimony of Fredy Rendón Herrera, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, of April 29, 2010 (evidence file, folios 19192 and 19193).

E.2. The displacement sites and conditions

E.2.1. Municipality of Turbo

117. The persons displaced to Turbo were initially located in the town's sports arena²¹⁵ and, subsequently, in two shelters built with assistance from international agencies.²¹⁶ Those displaced from the Cacarica River basin were placed in Shelter No. 1, located in the Turbo sports arena.²¹⁷

118. There is evidence indicating that some persons, ranging from 150²¹⁸ to 320 families, were accommodated in the Turbo sports arena as of the end of February 1997 and that, at the end of March 1997, there were 291 families (1,090 persons of whom 549 were children).²¹⁹ In Turbo the living conditions of those displaced were characterized by: (a) the absence of Government attention;²²⁰ (b) overcrowding;²²¹ (c) poor sleeping conditions;²²² (d) lack of privacy (those displaced did not have privacy in the circumstances that required this; for

²¹⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also: Constitutional Court Judgment T-955 of October 17, 2003 (evidence file, folio 135). Testimony of M.A.C.M. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 634). See also: Testimony of M.B.S. Serrano before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 645); Affidavits of January 21, 2013, prepared by Alicia Mosquera Hurtado (evidence file, folio 14973), Etilbia Del Carmen Paez Cierra (evidence file, folio 15042), and Ángel Nelis Palacios Quinto (evidence file, folios 14994 and 14995), and Testimony of Evangelina Mosquera Hinestroza of February 27, 1997, in volume 8 of case file 2332 (evidence file, folio 17725).

²¹⁶ Cf. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 19 (evidence file, folio 231): "In November 1999, around 52 families lived in the sports arena, 56 in Shelter No. 1 or '*Santo Ecce Homo*', 22 in Shelter No. 2 or '*Madre Laura*', and around 200 in the marginalized areas of Turbo [...]." Ombudsman's Office. See also: Affidavit prepared by Alicia Mosquera Hurtado on January 21, 2013 (evidence file, folio 14973).

²¹⁷ Cf. Letter of September 27, 2000, from the Colombian Ministry of Foreign Affairs, General Directorate for Special Affairs, to the Inter-American Commission (evidence file, folio 3760), which mentions that "following efforts made in the municipality of Turbo and based on information obtained by the commander of the Turbo Police Station, it has been established that the displaced who are settled in Turbo are divided into two groups entitled Shelter No. 1 situated in the Turbo sports arena, and Shelter No. 2 located on 114th Avenue and 115th Street, near the beach of the said municipality. In the first shelter are the displaced from the Cacarica River basin and, in the second, those displaced from Bajo Cauca." As noted by the Commission, and not disputed by the State, every day from 3 to 5 families arrived, each with an average of 12 members. See also, Visit of the Inter-American Commission to the shelter in the Turbo sports arena in the municipality of Apartadó, Third report on the situation of human rights in Colombia OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Chapter VI, para. 46 (evidence file, folios 768 and ff.).

²¹⁸ According to a document of the Ombudsman's Office, the head of the Apartadó Regional Office reported that a special visit had been made to the facilities of the covered sports arena during which the presence of more than 150 people had been observed. Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-03-03-1997 (evidence file, folio 50731).

²¹⁹ Cf. Letter addressed by the peasant communities displaced from Rio Sucio, Chocó, to the Administrative Directorate for Human Rights dated March 20, 1997 (evidence file, folio 1537).

²²⁰ Cf. Regarding the lack of attention by the Government during the first days in the Turbo sports arena, see the affidavits of January 21, 2013, prepared by Alicia Mosquera (evidence file, folio 14973), Elvia Hinestroza (evidence file, folio 15032), Mirina Luz Luz Cuadrado (evidence file, folio 15050), Leopoldina Ulloa Montaña (evidence file, folio 15065) and Henry Angulo Martínez (evidence file, folio 15074).

²²¹ Cf. Regarding the overcrowded conditions, see the affidavits of January 21, 2013, prepared by Alicia Mosquera (evidence file, folio 14973), John Jairo Mena Palacio (evidence file, folio 14984), Henry Angulo Martínez (evidence file, folio 15074) and Ángel Nelis Palacios Quinto (evidence file, folio 14996).

²²² Cf. No one could sleep in the sports arena; some lights remained turned on all night and people woke up with their faces burned; they were overcrowded and had to lie down on the cement without any covers; slowly they obtained mattresses and conditions improved. In this regard, see the affidavits of January 21, 2013 prepared by Marcos Fidel Velásquez (evidence file, folio 14953), Elvia Hinestroza (evidence file, folio 15032) and Leopoldina Ulloa Montañón (evidence file, folio 15065).

example, “to attend to their physiological needs,” to have intimate relations,²²³ and “the women gave birth in front of everyone”²²⁴); (e) food was inexistent, insufficient and/or unbalanced,²²⁵ and (f) water was insufficient and of poor quality.²²⁶ In this regard, it was indicated that those displaced were provided with minimum amounts of water, which had an impact on hygiene and on digestive functions.²²⁷ The foregoing, added to the experiences resulting from displacement, led first to illnesses that directly affected the physical²²⁸ and mental health²²⁹ of these people, a situation for which the State failed to provide any²³⁰ or insufficient attention,²³¹ second, to

²²³ Cf. Affidavit prepared by Alicia Mosquera Hurtado (evidence file, folio 14974). Regarding the inexistence of State assistance with regard to health care, see also the Affidavit prepared by Elvia Hinestroza Roa on January 21, 2013 (evidence file, folio 15036).

²²⁴ Cf. Those displaced had no privacy in circumstances where this was required; for example, “to attend to their physiological needs, [...] the women gave birth in front of everyone, although this is a very private act, all because the appropriate conditions did not exist.” Affidavit prepared by Elvia Hinestroza on January 21, 2013 (evidence file, folio 15032).

²²⁵ Cf. Regarding the food situation of those displaced, see the affidavits of January 21, 2013, prepared by Alicia Mosquera (evidence file, folio 14973), Marcos Fidel Velásquez (evidence file, folios 14952 and 14953), Mirna Luz Cuadrado (evidence file, folio 15050), John Jairo Mena Palacop (evidence file, folio 14984) and Henry Angulo Martínez (evidence file, folio 15074). In addition, the Social Solidarity Network acknowledged that: “there had been a systematic failure to provide humanitarian assistance, especially with food aid, which is causing serious problems of malnutrition among the displaced population. Social Solidarity Network, Memorandum. Monitoring the commitments made by the national Government to those displaced from the Cacarica River basin (Municipality of Riosucio, Chocó) who have been accommodated in the Turbo sports arena, in Bocas de Atrato and on the Cacique hacienda in Cupica (Bahía Solano) dated December 9, 1998 (evidence file, folio 48057).

²²⁶ Cf. Those displaced were provided with a minimum amount of water, which had an impact on hygiene and on digestive functions. In this regard, see the affidavits of January 21, 2013, prepared by Leopoldina Ulloa Montaña (evidence file, folio 15065), Jerónimo Pérez Argumedo (evidence file, folio 14930), Etilbia del Carmen Páez Cierra (evidence file, folio 15043), Alicia Mosquera Hurtado (evidence file, folio 14973), John Jairo Mena Palacio (evidence file, folio 14984), and Marcos Fidel Velásquez (evidence file, folio 14953). Also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN 4/1998/16, 9 March 1998 (evidence file, folio 752).

²²⁷ In this regard, see the affidavits of January 21, 2013, prepared by Leopoldina Ulloa (evidence file, folio 15065), Jerónimo Pérez Argumedo (evidence file, folio 14930), Etilbia del Carmen Páez (evidence file, folio 15043), Alicia Mosquera Hurtado (evidence file, folio 14973), Etilbia Del Carmen Paez Cierra (evidence file, folio 15043), John Jairo Mena Palacio (evidence file, folio 14984), and Marcos Fidel Velásquez (evidence file, folio 14953). Also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN 4/1998/16, 9 March 1998 (evidence file, folio 752).

²²⁸ Cf. Regarding the physical illnesses resulting from the poor conditions of the displaced, see the affidavits of January 21, 2013, prepared by Alicia Mosquera Hurtado (evidence file, folio 14974), John Jairo Mena Palacio (evidence file, folio 14987), Elvia Hinestroza Roa (evidence file, folio 15033) and Leopoldina Ulloa Montaña (evidence file, folio 15066). The women suffering specific physical ailments: affidavit prepared by Etilbia del Carmen Páez Cierra (evidence file, folio 15043). Also, the testimony of the presumed victims indicates that those displaced lacked basic health care services. Cf. Affidavits prepared by Etilbia Del Carmen Paez Cierra (evidence file, folio 15043); Henry Angulo (evidence file, folio 15074); Elvia Hinestroza Roa (evidence file, folio 15033); Ángel Nelis Palacios Quinto (evidence file, folio 14996); John Jairo Mena Palacio (evidence file, folio 14984); Jerónimo Pérez Argumedo (evidence file, folio 14929); and Alicia Mosquera Hurtado (evidence file, folio 14975). See also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN 4/1998/16, 9 March 1998 (evidence file, folio 752).

²²⁹ Cf. Affidavit prepared by Francisco Frenio Fernandez Padiclla on January 21, 2013 (evidence file, folio 15059). Regarding the psychological problems produced by the displacement, see the affidavits of January 21, 2013, prepared by Alicia Mosquera Hurtado (evidence file, folio 14974), John Jairo Mena Palacio (evidence file, folio 14987) and Eleodoro Sánchez Mosquera (evidence file, folio 15015).

²³⁰ Cf. Affidavit prepared by Alicia Mosquera Hurtado (evidence file, folio 14974) with regard to the inexistence of State assistance in relation to health care. See also the affidavit prepared by Elvia Hinestroza Roa on January 21, 2013 (evidence file, folio 15036).

²³¹ Cf. Affidavit prepared by John Jairo Mena Palacio on January 21, 2013 (evidence file, folio 14984) regarding the inadequacy of the health care services provided by the State. See also the affidavits of January 21, 2013, prepared by Jerónimo Pérez Argumedo (evidence file, folios 14929 and 1430), Elvia Hinestroza Roa (evidence file, folio 15032) and Alicia Mosquera Hurtado (evidence file, folio 14976). Also, some testimonies and other probative elements indicate that the displaced in the camps endured difficult living conditions. Cf. Affidavits of January 21, 2013, prepared by Alicia Mosquera Hurtado 2013 (evidence file, folio 14973) and Leopoldina Ulloa Montaña (evidence file, folio 15065). In this

adverse effects on the family structures²³² and, third, to problems for the children's schooling.²³³

E.2.2. Bocas del Atrato

119. Another group from Cacarica was displaced on February 24, 1997,²³⁴ to Bocas del Atrato, 15 kilometer from Turbo, crossing the Gulf of Urabá. According to information provided by the Commission and the representatives, it was composed of 70 individuals, who were accommodated in a school classroom and with local families.²³⁵ Furthermore, according to the Ombudsman's Office, "the Cacarica confrontations ousted approximately 250 persons from their homes to the village of Bocas de Atrato"²³⁶.

E.2.3. Panama

120. In addition, around 200 people went on foot to Panama.²³⁷ This group established impromptu camps in the Darien region.²³⁸ However, shortly after arriving in Panama, the displaced were informed that they could not remain in that country.²³⁹ The Colombian State

regard, see also the affidavits of January 21, 2013, prepared by Etilbia del Carmen Páez Cierra (evidence file, folio 15043) and Francisco Frenio Fernandez Padilla (evidence file, folio 15056). There is also evidence that most of them slept on the floor and, later, in beds located one beside the other, without any privacy, in the open space of the sports arena. Cf. Affidavits of January 21, 2013, prepared by Alicia Mosquera Hurtado (evidence file, folio 14973), Etilbia Del Carmen Paez Cierra (evidence file, folio 15043), Leopoldina Ulloa Montaña (evidence file, folio 15065), and Elvia Hinestroza Roa (evidence file, folio 15032); sworn statement presented by Augusto Gomez Rivas before the National Complaints Directorate of the Ombudsman's Office on November 4, 2003 (evidence file, folio 50923).

²³² Cf. Affidavits of January 21, 2013, prepared by Ernestina Valencia Teherán (evidence file, folios 15024 and 15025), and Lucelis Bautista Pérez (evidence file, folio 15005). Regarding the physical problems, see affidavit prepared by Jerónimo Pérez Argumedo on January 21, 2013 (evidence file, folio 14929). Regarding the destruction of the families as a result of the displacement and subsequent experiences, see also, the affidavits of January 21, 2013, prepared by Francisco Frenio Fernández Padilla (evidence file, folios 15056 and 15059), Jerónimo Pérez Argumedo (evidence file, folio 14939 and 14933), Alicia Mosquera Hurtado (evidence file, folio 14974), John Jairo Mena Palacio (evidence file, folio 14987), Ángel Nelis Palacios Quintos (evidence file, folio 14998) and Etilbia del Carmen Páez Cierra (evidence file, folio 15045).

²³³ Cf. Affidavit prepared by Alicia Mosquera Hurtado on January 21, 2013 (evidence file, folio 14973). See also: Affidavits of January 21, 2013, prepared by Etilbia Del Carmen Paez Cierra (evidence file, folio 15043), John Jairo Mena Palacio (evidence file, folio 14984), and Marcos Fidel Velásquez (evidence file, folio 14953). Similarly, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN 4/1998/16, 9 March 1998 (evidence file, folio 752).

²³⁴ Cf. Testimony of M.A.C.M. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit of December 11, 2002 (evidence file, folio 634), and Testimony of M.B.S. Serrano before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, of December 11, 2002 (evidence file, folio 645).

²³⁵ Cf. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231).

²³⁶ Cf. Ombudsman's Office, Apartadó Regional Office, Complaint 9745030-Cacarica-Operation Genesis-01-03-1997 (evidence file, folio 50735).

²³⁷ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also: Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 135); Testimony of M.A.C.M. before the Special Commission of the Human Rights and International Humanitarian Law Unit on December 11, 2002 (evidence file, folio 634). See also: Testimony of M.B.S. Serrano before the Special Commission of the Human Rights and International Humanitarian Law Unit on December 11, 2002 (evidence file, folio 645). See also, Press communiqué No. 151 of the Ombudsman's Office, Bogota, April 17, 1997 (evidence file, folio 51393).

²³⁸ Cf. Affidavit prepared by Francisco Frenio Fernandez Padilla on January 21, 2013 (evidence file, folio 15055). See also: Affidavit of Eleodoro Sánchez Mosquera of January 21, 2013 (evidence file, folio 15012). Also, Press communiqué No. 151 of the Ombudsman's Office, Bogota, April 17, 1997 (evidence file, folio 51393).

compulsorily transferred a large group to Bahía Cupica in Chocó department and placed them in the “El Cacique” hacienda.²⁴⁰

F. Events following the displacement

121. Following the events of February 1997, those displaced continued to be subject to harassment, threats and acts of violence by paramilitary groups.²⁴¹ It was also recorded that, between 1996 and 2002, several people were murdered or disappeared.²⁴² In addition, as of March 1997, the State was aware of the situation of insecurity, because it had been requested to take measures of protection in this regard.²⁴³

122. In addition, the evidence reveals that, in 1998, Social Action presented a housing improvement project for 418 families, which was subsidized by the petitioners, and 147 families benefited from it.²⁴⁴

G. The return of those displaced and the continuation of the acts of violence against those displaced from Cacarica

123. In February 1999, some of the communities displaced from Cacarica, declared themselves to be a “Peace Community” entitled “*Comunidad de Autodeterminación, Vida y*

²³⁹ Cf. Affidavit of Francisco Freno Fernandez Padilla of January 21, 2013 (evidence file, folio 15056). See also: Affidavit of Eleodoro Sánchez Mosquera of January 21, 2013 (evidence file, folio 15013). See also, Press communiqué No. 151 of the Ombudsman's Office, Bogota, April 17, 1997 (evidence file, folio 51393).

²⁴⁰ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231). See also: Affidavit of Eleodoro Sánchez Mosquera of January 21, 2013 (evidence file, folio 15013).

²⁴¹ Cf. Ombudsman's Office, Press communiqué No. 869 of August 21, 2003 (evidence file, folio 4465); United Nations High Commissioner for Human Rights, Report on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN 4/1998/16, 9 March 1998 (evidence file, folios 752, 763 and 764) and Inter-American Commission on Human Rights, Third report on the situation of human rights in Colombia OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Chapter VI, para. 46 (evidence file, folio 774). See also affidavits prepared on January 21, 2013, by Henry Angulo Martínez, Jerónimo Pérez Argumedo, John Jairo Mena Palacio, Alicia Mosquera Hurtado, Marcos Fidel Velásquez and Elvia Hinestroza Roa (evidence file, folios 15074, 14933, 14984, 14974, 14960 and 15032).

²⁴² Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 235); Inter-American Commission on Human Rights, note to the Minister for Foreign Affairs of June 8, 2001, on processing of precautionary measures (MC) MC 70-99 (evidence file, folio 1668) and Affidavit of Jerónimo Pérez Argumedo of January 21, 2013 (evidence file, folios 14933 and 14934).

²⁴³ Cf. Protection sub-Committee of the Joint Verification and Monitoring Commission of the Displaced Communities that are in Turbo, Bocas de Atrato and Bahía Cupica. Report (evidence file, folio 3887); *Comisión Intereclesial de Justicia y Paz*, Comunicación “Situación Cacarica - Forced displacement - Military presence” presented to the Ombudsman on September 22, 2003 (evidence file, folio 50899); Ombudsman's Office, Note No. 3010-04462 sent to the Urabá Regional Ombudsman's Office in October 2002 (evidence file, folios 50907 and 50908). *Comisión Intereclesial de Justicia y Paz*, Urgent action on the situation experienced by the Urabá region, addressed to the President of the Republic, Ernesto Samper Pizano, the Minister of the Interior, the Minister for Foreign Affairs, the Minister of Justice and Law, the Prosecutor General's Office, the Office of the Attorney General, the Ombudsman, and the Presidential Adviser for Human Rights on March 12, 1997. Annex to the initial petition of June 1, 2004 (evidence file, folios 1598 and ff.). In this regard, the Commission made an on-site visit to Colombia from December 1 to 8, 1997, during which it visited the Turbo sports arena and shelters, and on December 17, 1997, the Inter-American Commission issued precautionary measures to protect the life and personal integrity of these displaced persons. Third report on the situation of human rights in Colombia OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999. Chapter VI, para. 46 (evidence file, folios 768 and ff.)

²⁴⁴ Cf. This was done with a contribution of 144,908,450 Colombian pesos and a contribution of the community corresponding to 355,140,920 Colombian pesos. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 112 (evidence file, folios 7597 and 7598).

Dignidad" (hereinafter "CAVIDA") [Self-determination, Life and Dignity Community].²⁴⁵ After remaining for almost three years in the Turbo sports arena and in the El Cacique hacienda - Bahía Cupica (Chocó), they began the process of returning to their territory, following agreements between the national Government and the community, and monitored by a Joint Verification Commission. Another group of the displaced population chose to settle definitively in the municipality to which they had been displaced.²⁴⁶ Owing to the situation of insecurity and scarcities, they asked the Government to provide adequate safety and socio-economic conditions for their return.²⁴⁷

124. Agreements were therefore signed with the Colombian Government.²⁴⁸ Some of the agreements made by the Government, the communities and the Joint Verification Commission included the construction of housing, a production project, the "unclogging" of the navigable waterways and the permanent presence of the Ombudsman's Office as part of the comprehensive protection scheme.²⁴⁹ In addition, on December 13, 1999, the "Return Agreement between the Communities displaced from the Cacarica river basin provisionally settled in Turbo, Bocas de Atrato and Bahía, and the national Government" was signed, which included the components that the Government had to carry out for the definitive return of the communities.²⁵⁰

²⁴⁵ Cf. Ombudsman's Office. Press communiqué No. 869, of August 21, 2003 (evidence file, folio 51403). The objectives of these communities: not to participate either directly or indirectly in the armed conflict; not to bear arms; not to provide help of any type to those taking part in the conflict; to draw up their own regulations and abide by them; to bear the distinctive signs of the community responsibly; to commit to a political and negotiated settlement of the armed conflict; to enhance community work, and to defend their national identity and their territory. In order to put these objectives into practice, the communities requested the participants in the conflict: (a) to respect the areas where they live and work; (b) to respect their freedom of movement; (c) to remove the restriction on foodstuffs; (ch) to avoid political campaigning within the community and, consequently, not to recruit or pressure its members; (d) to respect their choice and their non-violent action; (e) to respect their civil rights and international humanitarian law; (f) to respect their principles and autonomy; (g) to abstain from taking reprisals against the community for those who join armed groups and, also, to denounce the facts to the Verification Commission. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, point C, Nos. 23 to 26. Constitutional Court. T-955 of October 17, 2003 (evidence file, folios 137 and 138). See also, *Somos Tierra de Esta Tierra. Memorias de una Resistencia Civil*. CAVIDA (evidence file, folio 301 and ff.).

²⁴⁶ Cf. Ombudsman's Office. Press communiqué No. 869, of August 21, 2003 (evidence file, folio 51403); Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 139 and 140). See also: The Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 27 (evidence file, folio 233).

²⁴⁷ Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 135). See also: Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 27 (evidence file, folio 233): "The conditions consisted in the construction of two new settlements (Esperanza en Dios and Nueva Vida), the award of collective title to the lands, the State's protection without weapons, community development and non-pecuniary reparation." See also: Affidavits of January 21, 2013 of John Jairo Mena Palacio (evidence file, folios 14985 and 14986); Henry Anguro Martínez (evidence file, folio 15075) and Marcos Fidel Velásquez (evidence file, folios 14957 to 14959).

²⁴⁸ Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 139); for example, the "Return Agreement between the Communities displaced from the Cacarica river basin provisionally settled in Turbo, Bocas de Atrato and Bahía, and the national Government" was signed on December 13, 1999. Similarly, letter of January 7, 1999, from the Ministry of Foreign Affairs to the Commission (evidence file, folio 3913).

²⁴⁹ Cf. Ombudsman's Office. Press communiqué No. 869 of August 21, 2003 (evidence file, folio 51403). According to the Ombudsman's Office, "[m]ost of these project have been executed with resources from the National Budget, supervised by the Social Solidarity Network, the Ministry of Transportation, and the *Banco Agrario*, among others"; See also, *Somos Tierra de Esta Tierra. Memorias de una Resistencia Civil*. CAVIDA (evidence file, folio 301 and ff.).

²⁵⁰ These components were: humanitarian assistance until the families could ensure their subsistence, documentation, construction of 418 houses, formal handing over of the decision awarding collective title to the territory to the community in Turbo on December 15, 2000, implementation of measures of protection, and dragging and chaneling of the navigable waterways of Perancho and Peranchito. Cf. Return Agreement between the Communities displaced from the Cacarica river basin provisionally settled in Turbo, Bocas de Atrato and Bahía, and the national Government (evidence file, folios 1632 to 1658); Colombian Constitutional Court, Judgment T-955 of October 17, 2003 (evidence file, folio 139).

125. The forced displacement of these communities lasted a total of four years,²⁵¹ from February 1997 to March 2001, although the return process began in January 2000.²⁵² It is an undisputed fact that 270 persons returned during the first stage; 84 in the second stage, followed by another 450 and, during the last stage, approximately 150 persons returned.²⁵³ In addition, owing to the persistence in the region of the factors that gave rise to the displacement in 1997 (the ACCU and the FARC guerrilla), the communities banded together in the CAVIDA process decided voluntarily, and under the aegis of the State and of the international community, to set up two settlements known as “Esperanza en Dios” and “Nueva Vida”, and determined to prevent armed agents from entering the areas that they lived in and cultivated, defined as humanitarian zones.²⁵⁴ The members of CAVIDA chose to adopt internal rules of coexistence in which they established that they would remain outside the armed conflict, and would not collaborate with any of those participating in the hostilities.²⁵⁵

126. The evidence shows that, during the four years of the displacement,²⁵⁶ the State only offered the following support for the return: (a) humanitarian assistance to 10 families who, in 2004,²⁵⁷ returned voluntarily from Jaqué (Panama) to Nueva Vida; (b) actions in the Cacarica river basin aimed at community assistance, from which one “Nueva Vida” family benefited;²⁵⁸ (c) humanitarian assistance, psychological care, and organization of the shelters by the Presidential Advisory Council for the Displaced and some NGOs, January 1999;²⁵⁹ (d) food for Cupica and Turbo from May 1999 and January 2000, respectively, until December 2000, to the value of 1,243,475,684 Colombian pesos; (e) payment of public services of water and electricity for Turbo and the two shelters amounting to 68,233,062 pesos, and (f) “toiletry kits, dishes, cooking utensils and stoves for 172,676,618 pesos.”²⁶⁰

²⁵¹ Cf. Affidavit of John Jairo Mena Palacio of January 21, 2013 (evidence file, folio 14985).

²⁵² Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 37 (evidence file, folio 233).

²⁵³ Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 140). See also: Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 37 (evidence file, folio 237).

²⁵⁴ Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 140). See also: Affidavit of Elvia Hinestroza Roa of January 21, 2013 (evidence file, folio 15034); Complaint filed by Evangelina Mosquera Hinestroza, on February 27, 1997, before the National Justice and Peace Prosecutors Unit advising that she had been displaced from the district of Cacarica to Turbo (evidence file, folio 17725). Also: Ombudsman's Office, Press communiqué No. 773 of October 8, 2002 (evidence file, folio 51399).

²⁵⁵ Cf. Ombudsman's Office. Press communiqué No. 869 of August 21, 2003 (evidence file, folio 51403): “Government entities that are members of the Joint Commission (including the Presidential Human Rights Program, the Ministry of the Interior, the Social Solidarity Network, the Ombudsman's Office, the Public Prosecution Service, as well as representatives of international agencies and of NGOs) have visited these settlements several times; are aware of the situation of their inhabitants, and can corroborate the commitments made by the different Government entities and by the community itself.” See also: Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folios 137 and 138). Similarly, Ombudsman's Office. Press communiqué No. 773 of October 8, 2002 (evidence file, folio 51399 and 51400) and “*Somos Tierra de Esta Tierra. Memorias de una Resistencia Civil*,” CAVIDA (evidence file, folio 301 and ff.).

²⁵⁶ Cf. Affidavit of John Jairo Mena Palacio of January 21, 2013 (evidence file, folio 14985).

²⁵⁷ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 110 (evidence file, folio 7597).

²⁵⁸ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, paras. 148 and 149 (evidence file, folio 7870): Visits to provide comprehensive assistance in 2005 and one in 2006, for medical-surgical care; food, medicines, and psychosocial care; in coordination with *Comunidad Hábitat Finanzas* (CHF), schools were constructed in the districts of Bogota (1), San Higinio (1) and El Limón (1), and 150 temporary shelters were erected for San Higinio, Bocas del Limón, La Tapa, Puente América, Santa Lucia and Barranquilla.

²⁵⁹ Cf. Vice Presidency of the Republic of Colombia, Ministry of Foreign Affairs, Internal work document of September 26, 2002 (evidence file, folio 48117).

²⁶⁰ Cf. Joint Verification Commission, State and Government entities. Management report, March 2004 (evidence file, folios 4988 and 4989).

127. It is also on record that the State provided technical and financial support for the implementation of the different stages of the return to the area,²⁶¹ preparing the initial conditions for the return by planting crops and hiring boats and, subsequently, by housing projects, production projects and other activities to assist in the resettlement. Also, in September 2000, 201 persons were transferred from Bahía Cupica to Turbo for family reunification purposes, and humanitarian assistance was provided to 10 families who returned voluntarily from Jaqué (Panama) to Nueva Vida in 2004.²⁶² Lastly, actions were taken in the Cacarica river valley to provide attention to the communities, and one “Nueva Vida” family benefited from them.²⁶³

128. However, the representatives and the victims indicated that the Government only complied partially with the agreements it had made,²⁶⁴ and that the housing construction project in these settlements, started in October 2000, had proceeded very slowly. In addition, they indicated that the process of providing identity documents and registering those who returned to the Cacarica river basin was only partly completed,²⁶⁵ and that “[d]espite the implementation of the different mechanisms of prevention, the proposed objective have not been achieved completely, owing to the poor response of the Armed Forces.²⁶⁶ Nevertheless, the evidence reveals that, between May 1999 and December 2000, the State provided food to those who were returning to the Cacarica territories, and who remained in Turbo and in Cupica, amounting to approximately 1,243,475,684.00 Colombian pesos.²⁶⁷

129. In addition, as it has been noted (*supra* para. 121), the information presented by the different State entities reveals that the Cacarica communities, in particular those of “Esperanza en Dios” and “Nueva Vida,” continued to be subjected to threats, harassment and acts of violence by members of the armed groups.²⁶⁸ Between 1996 and 2002, 106 persons belonging

²⁶¹ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 104 (evidence file, folio 7596): the different stages of the return were as follows: the exploration (October 13, 1999), the vanguard (December 1999), the first stage (January 31, 2000), the second stage (October 13, 2000), and the third stage (between December 2000 and March 1, 2001). See also: Return Agreement between the Communities displaced from the Cacarica river basin provisionally settled in Turbo, Bocas de Atrato and Bahía, and the national Government (evidence file, folio 1638).

²⁶² Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 110 (evidence file, folio 7597).

²⁶³ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 111 (evidence file, folio 7597): Visits to provide comprehensive assistance in 2005 and one in 2006, for medical-surgical care; food, medicines, and psychosocial care; in coordination with *Comunidad Hábitat Finanzas* (CHF), schools were constructed in the districts of Bogota (1), San Higinio (1) and El Limón (1), and 150 temporary shelters were erected for San Higinio, Bocas del Limón, La Tapa, Puente América, Santa Lucía and Barranquilla.

²⁶⁴ Cf. Affidavits of January 21, 2013, prepared by Henry Angulo Martínez (evidence file, 15075); Jerónimo Pérez Argumedo (evidence file, folio 14932), and John Jairo Mena Palacio (evidence file, folio 14986).

²⁶⁵ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, point E.10 (evidence file, folio 240).

²⁶⁶ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 15 (evidence file, folio 241).

²⁶⁷ Cf. Management report of the Joint Verification Commission of March 2004 (evidence file, folios 4988 and 4989). The note of the Ministry of Foreign Affairs of April 24, 2001, on the processing of MC 70-99, received on April 25, 2001, indicates that this amounted to 11,154,769,286.00 pesos (evidence file, folios 1658 and ff.).

²⁶⁸ Cf. Ombudsman's Office, System for the prevention of massive human rights violations, Early Warning System, November 30, 2001 (evidence file, folio 51083); Ombudsman's Office, Early Warning System, Risk assessment and description, February 8, 2002 (evidence file, folio 51087); Ombudsman's Office, Early Warning System, Risk report No. 017-03, March 14, 2003 (evidence file, folio 51103); Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, paras. 36 to 47 (evidence file, folios 237 and 238); Ombudsman's Office. Press communiqué No. 667-A of December 19, 2001, (evidence file, folio 51396); Ombudsman's Office. Press communiqué No. 691 of February 8, 2002 (evidence file, folio 51397); Ombudsman's Office. Press communiqué No. 753, of August 14, 2002 (evidence file, folio 51398); Ombudsman's Office. Press communiqué No. 1349, of October 16, 2008 (evidence file, folio 51407), and Ombudsman's Office, Note No. 402501/1040-08, Report on imminent danger No. 025-08, for the Municipality of Rio Sucio – Chocó of November 4, 2008 (evidence file, folio 51185). See also: Affidavits of January 21, 2013, prepared by Etilbia Del Carmen Paez Cierra (evidence file, folio 15044); Elvia Hinestroza Roa (evidence file, folio 15034), and Marcos Fidel Velásquez

to the Peace Communities and the process of the return to Cacarica were murdered, and 19 persons were disappeared.²⁶⁹ Despite the new acts of violence, in October 2002, 939 persons decided to continue the return process.²⁷⁰ On September 7, 2001, the Cundimarca Administrative Court issued an order to protect the fundamental rights of the communities of the Cacarica River to health and also life, tranquility, and the right to obtain a response to their petitions from the authorities.²⁷¹ The representatives also indicated that paramilitary groups made two incursions into the settlements of the communities in 2001: the first on June 9 and the second on June 10.²⁷²

H. Dispossession and illegal logging on the collective territory

130. As already noted, the area of the Cacarica River basin is located in a region recognized to have abundant natural resources. The forest wealth of the area is also important for the survival of the communities who inhabit the Cacarica River basin, whose livelihood is based on agriculture, artisanal fishing, hunting, and also logging (*supra* para. 87).

131. In 1967, Colombia's Congress approved Law 31,²⁷³ recognizing to the "black communities" the right to collective ownership of the territories they occupied ancestrally and, consequently, the right to use and exploit its lands and woods, the latter by law or by prior authorization of the environmental authority, in accordance with the Natural Resources Code.²⁷⁴ Law 70 was promulgated on August 31, 1993, recognizing "to the black communities that have been occupying vacant land in the rural areas on the banks of the rivers of the Pacific Basin, in keeping with their traditional production methods, the right to collective ownership, as established in the following articles."²⁷⁵

132. Regarding the logging in the Cacarica River basin, in August 1981, Maderas del Darién S.A. (hereinafter "MADARIÉN") asked the National Renewable Natural Resources and Environmental Institute (hereinafter "INDERENA") to grant it two logging permits (hereinafter

(evidence file, folio 14960). See also, Ombudsman's Office. Press communiqué No. 773 of October 8, 2002 (evidence file, folio 51399).

²⁶⁹ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, para. 2 (evidence file, folio 235). On June 8, 2001, the Inter-American Commission asked the State to provide heightened measures of protection for the inhabitants of "Esperanza en Dios" and "Nueva Vida" because a group of paramilitaries had entered the "Esperanza en Dios" settlement and had retained 20 of its members. Cf. Note of the Inter-American Commission on Human Rights to the Minister for Foreign Affairs of June 8, 2001, on the processing of MC 70-99 (evidence file, folio 1668).

²⁷⁰ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, paras. 26 to 48 (evidence file, folios 237 and 238). See also: Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón, concerning 'Description Operation Torment in the Atrato, April 17, 2002, II (Bojayá) (evidence file, folios 44477).

²⁷¹ Cf. Cundimarca Administrative Court, First section, File A.T 00-1378 of September 7, 2001 (evidence file, folio 46890); Colombian Constitutional Court. Judgment T-955 of October 17, 2003, p. 24 (evidence file, folio 156).

²⁷² Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002, paras. 45 and 46 (evidence file, folio 238).

²⁷³ Cf. Law 31 of July 19, 1967, approving ILO Convention 107 concerning the protection and integration of indigenous and tribal peoples in independent countries, adopted by the fortieth session of the General Conference of the International Labour Organization.

²⁷⁴ Law 31 of 1967, permitted an increase in the State's policies recognizing the communities' territorial rights and provided the legal grounds for the request by the black peasants of the Atrato, as of 1986, for communal title to the land, and for their opposition to the logging activities on their territories. Cf. Colombian Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 143).

²⁷⁵ Law 70 of 1993, Official gazette No. 41,013 of August 31, 1993, article 1 (evidence file, folio 695). Law 70 of 1993 was complemented by transitory article 55 of the Colombian Constitution that, among other matters, recognized to the black communities that had been occupying vacant land in the rural areas on the banks of the rivers of the Pacific Basin in keeping with their traditional production methods, the right to collective ownership, pursuant to its provisions.

also “PAF”) for the sites of Sábalo and Larga Boba. Subsequently, in 1982, the same company applied to the National Corporation for the Development of Chocó (“CODECHOCÓ”) for a PAF for the Balsa II Project, located in the area of Puerto Escondido. Following a long procedure, resulting above all from the involvement of INDERENA and CODECHOCÓ, entities that shared jurisdiction and applied different rules under the Natural Resources Code, in 1992 and 1993, the CODECHOCÓ Board of Directors approved several of the permits that had been requested.²⁷⁶

133. As regards the situation of the Cacarica communities, in 1992, the Government created the Special Commission for the Black Communities under transitory article 55 of the Constitution, which expressed concern about the logging in the area of the Cacarica River because of the river was being blocked owing to the transportation of logs and the deforestation of the last reserves of cativa trees in the country. In addition, it revealed complaints filed by social organizations owing to the procedures by which CODECHOCÓ had granted forestry exploitation and logging permits to the detriment of the communities, and violating transitory article 55. The commissioners insisted in the need to suspend the concession of large-scale forestry permits until the collective titling of the territories of the black communities had been regulated and appropriate policies had been elaborated to protect the environment.²⁷⁷

134. Then, on April 13, 1993, the Superior Court of the Judicial District of Quibdó issued an order to protect the fundamental right to work of the employees of Maderas del Darién S.A. and ordered CODECHOCÓ to officialize, by contracts, the forestry exploitation permits granted by resolution 3595 of December 1992 to the said logging company. This decision was revoked in May 1993 by the Supreme Court of Justice²⁷⁸ and, on October 22, 1993, the Third Review Chamber of the Constitutional Court confirmed the Supreme Court’s ruling.²⁷⁹

135. Immediately after the first instance decision of the Superior Court of the Judicial District of Quibdó, at the end of April 1993, CODECHOCÓ signed the contracts for the Balsa II and Guamal forestry exploitation projects (corresponding to resolutions 3595 and 3596 of 1992, *supra* para. 132) and the PAF for Sábalo and Larga Boba (corresponding to resolutions 655 and 656 of 1993, *supra* para. 132). On July 27, 1995, the Ombudsman asked the Superior Court of the Judicial District of Chocó to annul resolutions 3595 and 3596, and order CODECHOCÓ to adopt measures to comply with the said rulings. After examining the request, the Superior Court ordered CODECHOCÓ to comply with the prior decisions of the Constitutional Court and of the Supreme Court. In addition, it sanctioned the Director of CODECHOCÓ for contempt, but the Labor Cassation Chamber of the Supreme Court of Justice annulled the sanction, considering that it had been imposed in relation to an inexistent judicial order.

136. Even though CODECHOCÓ ordered the suspension of all logging activities in the Cacarica River basin by resolution 1180 of September 7, 1999, on December 9 that year CODECHOCÓ issued resolution 1486 authorizing the Balsita Community Council to log cativa trees. In addition, some months later, on June 2, 2000, in a note addressed to the legal representative of Madarién, CODECHOCÓ authorized the resumption of the Balsa II PAF, which had been suspended since 1997.

²⁷⁶ The permits were granted by resolutions 3595 and 3596 of December 30, 1992, 655 of April 16, 1993, and 656 of May 28, 1993. However, the CODECHOCÓ Board of Directors issued the permits subject to the contract including “a clause that will condition their validity to the final decision taken by the legislator under transitory article 55 of the Constitution,” an article that recognized the right to collective land ownership of the black communities owing to the years that they had occupied vacant land in the rural areas on the banks of the Pacific Basin.

²⁷⁷ Cf. Colombian Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folios 157 and 158).

²⁷⁸ Cf. Colombian Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folios 153 and 154).

²⁷⁹ Specifically, the Colombian Constitutional Court emphasized the importance of protecting the environment, and the natural resources and strategic ecosystems. Cf. Judgment T-469/1993 of the Colombian Constitutional Court, cited in the judgment of the Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 155), and Ombudsman’s Office, undated *Amicus curie* presented by the Ombudsman’s Office to the Constitutional Court in 2002 (evidence file, folio 46529).

137. Meanwhile, some weeks previously, on April 26, 1999, by resolution 0841 of the Colombian Agrarian Reform Institute (hereinafter “INCORA”), 23 black communities members of the Community Council of the Cacarica River basin²⁸⁰ had been granted title to collective ownership of vacant land on its territory, located in the jurisdiction of Riosucio, Chocó department. Regarding the administration of the collective territory, the resolution established that, in keeping with article 32 of Decree 1745 of 1995, it would be administered and managed by the Board of the Community Council of the Cacarica River basin, based on the internal regulations approved by the Council's general assembly.

138. On September 2, 1999, the National Environmental Directorate presented a report to the Community Council of the Cacarica River basin in which it affirmed that logging was being carried out on the territories of those displaced, and logging camps had been set up. On May 10, 2000, Maderas del Darién S.A. informed CODECHOCÓ of its decision to commence activities with the participation of the communities settled in the area.²⁸¹

139. In June 2000, in the context of monitoring and following up on the agreements signed by the national Government with the communities returning to the region, the Ombudsperson of the Justice Department of the Cacarica River Basin, the Director of the Los Katios National Park, and the Human Rights Advisers of the Public Prosecution Service denounced that logging was taking place in the territory of the communities that were in the process of returning.²⁸²

140. In June 2000, CODECHOCÓ asked that all logging activities in Balsita be suspended until this was authorized again, because the authorized volume had already been extracted.²⁸³ During 2000 and 2001, reports of illegal logging activities by the communities of the Cacarica River basin continued and, in response to these complaints, officials of the Public Prosecution Service, the Ombudsman's Office and other State agencies visited the area. In May 2001, officials of the Ministry of the Environment, the Public Prosecution Service (hereinafter also “PGN”), the Social Solidarity Network, UNHCR and delegates of the returned communities (CAVIDA) and of the Justice and Peace Commission again visited the area, following which they confirmed inappropriate mechanized logging and the absence of the CAR which was not verifying the application of appropriate forestry management measures.²⁸⁴

²⁸⁰ The collective title was awarded on December 15, 1999, in an official act held in the Turbo sports arena, and benefitted 710 families, with a total of 3,840 people. The 23 communities mentioned in INCORA Resolution 0841 were: Balsagira, Balsita, Bocachica, Bendito Bocachica, Bogota, Bocas del Limón Peranchito, Quebrada Bonita, Quebrada del Medio, La Honda, Las Mercedes Barranquilla, La Virginia Perancho, Las Pajas, Montañita Cirilo, Puente America, Puerto Berlín, Puerto Nuevo, San Higinio, San José de Balsa, Santa Lucía, Teguerra Medio, Varsovia, Vijao Cacarica and Villa Hermosa La Raya. The resolution was based on the verification that the area had been occupied and exploited historically and ancestrally by the applicant black communities, with traditional production methods in keeping with their culture, uses and customs. Cf. INCORA Resolution No. 841 of April 26, 1999 (evidence file, folio 47053). Note of the Ministry of Foreign Affairs of August 27, 2009, para. 113 (evidence file, folio 7598).

²⁸¹ Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 164).

²⁸² In particular, they denounced the highly technical logging of cativo which directly affected the subsistence resources of the communities that were returning and their natural resources; the blocking of the navigable waterways; the injection of the logs with substances that poisoned the water and contaminated the fish, and the transformation of the cativa plantations into cattle pastures and their extinction. Cf. Constitutional Court. Judgment T-955 of October 17, 2003, p. 46 (evidence file, folio 178). See also: Public Prosecution Service. Disciplinary Chamber. Case file No. 161-01435 (155-33124/99). Bogota, August 22, 2003 (evidence file, folios 9198 and 9210).

²⁸³ In mid-2000, it was recorded that only Maderas del Darién remained in the region, because the other companies had abandoned the area owing to the situation of “general impoverishment.” In addition, it was noted that the logging was carried out in a highly technical way with adverse effects on the environment and, also, that it “directly affected the resources of the communities that were in the process of returning, and their cultural resources.” Cf. Ombudsman's Office, undated *Amicus curiae* presented by the Ombudsman's Office to the Constitutional Court in 2002 (evidence file, folio 46531).

²⁸⁴ They also revealed some of the impacts of the logging – “deforestation, trails opened by tractors,” “environmental damage owing to the amount of tractor oil on the ground,” and the blocking of the river – and, among other measures, they recommended conducting a technical assessment in order to determine the damage and its

141. On September 7, 2001, the Cundimarca Administrative Court issued an order to protect the fundamental rights of the Cacarica River communities to health in connection with life and tranquility and, among other measures, ordered the Chocó Autonomous Corporation to ensure compliance with the administrative decision that had decreed the suspension of logging in that sector (*supra* para. 136).²⁸⁵ This decision was confirmed on November 16, 2001, by the Council of State.²⁸⁶ On October 27, 2001, the Board of the Community Council of the Cacarica river basin denounced, in a public communication, the continuation of logging on its collective territory by Maderas del Darién S.A.²⁸⁷

142. In 2001, the Public Prosecution Service opened a disciplinary proceeding against the CODECHOCÓ Board of Directors based on their complicity with the illegal actions of the companies Maderas del Darién S.A. and Pizano S.A., by granting them logging permits, legalizing the lumber by irregular mechanisms, and contributing to the enrichment of third parties.²⁸⁸ On December 19, 2002, it was decided to declare the disciplinary responsibility of the Director General, the Secretary General, and the Deputy Director of Sustainable Development of the Chocó Regional Autonomous Corporation (CODECHOCÓ) and, consequently, order their removal.²⁸⁹

143. On August 22, 2003, the Disciplinary Chamber of the Public Prosecution Service decided to appeal against the first instance judgment of the Special Disciplinary Commission of December 19, 2002 (*supra* para. 142). On that occasion, it abstained from deciding that it was null, and decided to confirm it, considering that no grounds had been presented that would invalidate the ruling delivered.²⁹⁰ On October 17, 2003, the Colombian Constitutional Court decided to issue an order to protect the fundamental rights threatened by the indiscriminate logging on the collective territory of the appellants.²⁹¹ On April 27, 2005, CODECHOCÓ, in Resolution No. 538, imposed a preventive measure consisting in the suspension of any type of logging, except “that carried out under the law,” in the jurisdiction of the Chocó department without the respective permit, concession or authorization issued by CODECHOCÓ.²⁹²

extent, and to ensure compliance with the logging norms in force. Ombudsman's Office, undated *Amicus Curiae* presented by the Ombudsman's Office to the Constitutional Court in 2002 (evidence file, folio 46531).

²⁸⁵ It stipulated that the Military Forces present in the area should adopt a plan “that achieves the objective of providing security to the area and preserving the life and stability of the community in the face of violent actions of illegal armed groups.” Cf. Cundimarca Administrative Court, First Section, File A.T 00-1378 of September 7, 2001 (evidence file, folio 46912). Also, Constitutional Court Judgment T-955 of October 17, 2003, p. 23 (evidence file, folio 155).

²⁸⁶ In particular the Government was asked to take measures in relation to the illegal logging. Also, the Ministry of the Interior was asked to intervene in the municipality of Riosucio in relation to the election of the new Board of the Cacarica Council. Cf. Constitutional Court. Judgment T-955 of October 17, 2003 (evidence file, folio 156).

²⁸⁷ Cf. Constitutional Court Judgment T-955 of October 17, 2003 (evidence file, folio 141).

²⁸⁸ Cf. Public Prosecution Service. First instance judgment sanctioning the members of the CODECHOCÓ Board of Directors. December 19, 2002 (evidence file, folios 9044 and ff.). The Public Prosecution Service indicated, in particular, that CODECHOCÓ had encouraged the extraction of the products of the forests of the Cacarica River Basin carried out by Maderas del Darién S.A. and Pizano S.A., as well as the illegal enrichment of these companies. See also: Public Prosecution Service. Disciplinary Chamber. Case file No. 161-01435 (155-33124/99). Bogota, August 22, 2003 (evidence file, folio 9186).

²⁸⁹ The Public Prosecution Service indicated, in particular, that CODECHOCÓ had encouraged the extraction of the products of the forests of the Cacarica River Basin carried out by Maderas del Darién S.A. and Pizano S.A., as well as the illegal enrichment of these companies. Cf. Public Prosecution Service. First instance sentence sanctioning the members of the CODECHOCÓ Board of Directors. December 19, 2002 (evidence file, folio 9181). See also: Public Prosecution Service. Disciplinary Chamber. Case file No. 161-01435 (155-33124/99). Bogota, August 22, 2003 (evidence file, folio 9186).

²⁹⁰ Cf. Public Prosecution Service. Second Instance ruling relating to the judgment sanctioning the members of the CODECHOCÓ Board of Directors. Bogota, August 22, 2003 (evidence file, folio 4316 to 4368).

²⁹¹ Cf. Constitutional Court Judgment T-955 of October 17, 2003 (evidence file, folio 223).

²⁹² Cf. CODECHOCÓ, Resolution No. 538 of April 27, 2005 (evidence file, folio 47081).

1. The jurisdictional proceedings

1.1. Ordinary criminal jurisdiction

144. The evidence in the case file reveals that two investigations are pending before the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office (hereinafter "UDH-FGN" or "UNDH-DIH") into the facts of this case: investigation No. 5767 (now 426)²⁹³ for the offense of conspiracy to commit a crime, and investigation No. 2332²⁹⁴ for the offense of murder of a protected person, Marino López Mena, forced displacement, and conspiracy to commit a crime.

1.1.1. Criminal investigation No. 5767 (now 426)

145. On January 19, 1999, the Prosecutor General's Office (hereinafter "FGN") opened a preliminary investigation against Rito Alejo del Río Rojas under file No. 5767 (now 426), based on reports of his presumed collaboration with paramilitary groups in 1996 and 1997, while he commanded the 17th Brigade.²⁹⁵ In addition, the investigation implicated the former soldier Oswaldo de Jesús Giraldo Yepes.²⁹⁶ On July 21, 2001, the Special Prosecutor of the Bogotá National Human Rights and International Humanitarian Law Unit, in coordination with the Head of this Unit and in consultation with the Prosecutor General, opened a formal investigation against del Río Rojas for the offenses of conspiracy to commit a crime, misuse of equipment, and malfeasance by omission, and ordered his arrest and the search of his home.²⁹⁷

146. On July 23, 2001, a Special Prosecutor of the UNDH-DIH and three members of the Technical Investigation Corp (hereinafter "CTI"), coordinated by the Head of the UNH-FGN, executed the arrest warrant against General del Río Rojas and the search of his home.²⁹⁸

147. On July 27, 2001, the defense counsel of Rito Alejo del Río Rojas asked the prosecutor to abstain from taking a decision on his legal situation based on lack of functional competence, because the accused had been a General of the Republic at the time of the events.²⁹⁹ On July 31, 2001, the prosecutor decided his legal situation, imposing preventive detention without the possibility of parole, for the offenses of conspiracy to commit a crime aggravated by the proven

²⁹³ This investigation was previously identified under case files Nos. 1440 and 5767. Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 170 (evidence file, folio 7623).

²⁹⁴ This investigation was previously identified under case files No. 147301 of the 100th Prosecutor of Quibdó. Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 170 (evidence file, folio 7623).

²⁹⁵ Cf. Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, February 4, 2013 (evidence file, folio 15503).

²⁹⁶ Cf. Prosecutor General's Office, brief of July 21, 2001, declaring the investigation open. Case file 426, original volume No. 4. This brief records that the investigation implicated Rito Alejo del Río Rojas and O.J.G.Y. in the proceedings and indicates that an order was given to issue arrest warrants for both accused (evidence file, folio 40143).

²⁹⁷ Cf. Prosecutor General's Office, brief of July 21, 2001, declaring the investigation open. Case file 426, original volume No. 4 (evidence file, folio 40149). See also: Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, February 4, 2013 (evidence file, folio 15504).

²⁹⁸ Cf. Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, February 4, 2013 (evidence file, folio 15504). See also: Communication of the Inter-American Commission to the Colombian State of August 9, 2001, in the proceeding on precautionary measures (evidence file, folio 1856). Also: Record of search of a building, UDH-FGN. Case file 426, original volume No. 4 (evidence file, folio 40150).

²⁹⁹ Cf. Brief sent by del Río's defense counsel to a Special Prosecutor of the UNDH-DIH asking "this office, and any other office of the National Human Rights Unit to abstain from deciding the legal situation of Brigadier General Alejo del Río [...]," July 27, 2001 (evidence file, folio 40364).

connections of the Army's 17th Brigade with the Peasant Self-Defense Forces of Cordoba and Urabá (ACCU), when operating in these regions.³⁰⁰

148. On August 3, 2001, the defense counsel of General Rito Alejo del Río Rojas filed an application for *habeas corpus*, which was decided in his favor on August 4, 2001, by the 31st Criminal Court of the Bogota Circuit, ordering his release owing to the prosecutor's lack of competence to order his arrest. According to the evidence, this was because investigations involving soldiers with the rank of General correspond to the Prosecutor General.³⁰¹ In addition, the order was issued to investigate the prosecutor and the officials who took part in the arrest of this soldier and the search of his home.³⁰²

149. The investigation was forwarded to the office of the Prosecutor General who, in an order of October 9, 2001, decreed the nullity of the decision to open a preliminary inquiry, the investigative measure, and the preventive detention that had been ordered. As a result, it was decided that the proceedings should be repeated, that the senior officer be summoned for questioning, and that evidence be collected.³⁰³

150. On July 16, 2002, Father Javier Giraldo, through his legal representative, filed a civil complaint in "representation of humanity" in the context of investigation 5767, which was rejected by the Prosecutor General on August 13, 2002.³⁰⁴ An appeal for reconsideration was filed against this decision; but the initial ruling was confirmed.³⁰⁵

151. On September 25, 2002, Father Javier Giraldo filed an application for *amparo* before the Criminal Cassation Chamber of the Supreme Court of Justice³⁰⁶ (hereinafter also "SCJ") against the Prosecutor General because, in his opinion, "by not allowing him to represent the people in the criminal proceedings against Rito Alejo del Río Rojas, his fundamental right of access to justice had been violated."³⁰⁷ This application was denied on October 8, 2002, because "the constitutional judge is unable to examine judicial measures and proceedings by means of an application for *amparo*."³⁰⁸ The Constitutional Court opted to review the adverse judgment, revoked the decisions taken by the Prosecutor General and the decisions adopted by the

³⁰⁰ Cf. Decision of the UDH-FGN of July 31, 2001. Case file 426, original volume No. 5 (evidence file, folios 40370, 40387 and 40388). See also: Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, of February 4, 2013 (evidence file, folio 15505).

³⁰¹ Cf. Decision of August 4, 2001, on application for *habeas corpus* of the 31st Criminal Court of the Bogota Circuit, file No. 0004/2001 (evidence file, folio 1969).

³⁰² Cf. Decision of August 4, 2001, on application for *habeas corpus* of the 31st Criminal Court of the Bogota Circuit, file No. 0004/2001 (evidence file, folios 1970 and 1972).

³⁰³ Cf. Decision of the Prosecutor General of October 9, 2001. File 426, original volume No. 7 (evidence file, folios 41006 to 41008). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15505).

³⁰⁴ Cf. Application for *amparo* before the Civil Chamber, Supreme Court of Justice (undated), filed by the legal representative of Father J.G. (evidence file, folio 42386). Cf. Constitutional Court, Judgment T-249. March 21, 2003 (evidence file, folios 2000 and 2001). Also: Preliminary arguments in proceeding 5767, by the legal representative of Father J.G. (evidence file, folio 42115).

³⁰⁵ Cf. Constitutional Court, Judgment T-249 of March 21, 2003 (evidence file, folio 2002). Also: Preliminary arguments in proceeding 5767, by the legal representative of Father J.G. (evidence file, folio 42115).

³⁰⁶ Cf. Constitutional Court, Judgment T-249. March 21, 2003 (evidence file, folio 2004).

³⁰⁷ Cf. Brief appealing against the decision of October 9, 2001, in file 5767 deciding the nullity and the re-opening of the investigation against Rito Alejo del Río Rojas. Colombian Constitutional Court, Judgment T-249 of March 21, 2003 (evidence file, folio 2005).

³⁰⁸ This action was denied on October 8, 2002, because "the constitutional judge is unable to examine judicial measures and proceedings by means of an application for *amparo*." Cf. Constitutional Court. Judgment T-249. March 21, 2003 (evidence file, folio 2005).

Supreme Court of Justice, and, on March 21, 2003, ordered the Prosecutor General to admit the request for legal standing as a civil party.³⁰⁹

152. On May 29, 2003, the Prosecutor General defined the legal situation of del Río Rojas without ordering preventive detention,³¹⁰ and decided the closure of the investigation. Lastly, on March 9, 2004, he decided the summary proceeding with a decision to preclude the investigation.³¹¹

153. On February 18, 2009, the 30th Criminal Prosecutor II, in compliance with orders from the Public Prosecution Service, filed an application for review against the preceding decision,³¹² and this was declared admissible on March 11, 2009, by the Criminal Cassation Chamber of the Supreme Court of Justice. As a result, the *res judicata* status was lifted, and thus the re-opening of criminal investigation No. 426 was ordered, owing to the emergence of new evidence and facts that were not known when the preclusion was decided.³¹³ The new evidence referred to in the decision consisted in the voluntary confessions of Éver Veloza García,³¹⁴ Salvatore Mancuso Gómez³¹⁵ and Jorge Iván Leverde Zapata,³¹⁶ members of paramilitary groups, made before the Justice and Peace Unit of the Prosecutor General's Office, and also the testimony of Elkin Casarrubia Posada before the UDH-FGN.³¹⁷

154. On April 27, 2009, the Prosecutor General issued a decision in which he ordered that the proceedings be forward to the National Prosecution Directorate so that the latter could decide which official should continue the investigation.³¹⁸ Consequently, on May 18, 2009, by decision No. 0-1973 of the Prosecutor General, the case was assigned to the 20th Prosecutor of the

³⁰⁹ Cf. Constitutional Court. Judgment T-249. March 21, 2003 (evidence file, folio 2026).

³¹⁰ Cf. The Prosecutor defined the legal situation of Rito Alejo del Río Rojas, case 5767 (evidence file, folio 1853). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15506).

³¹¹ Cf. Decision of the Prosecutor General of March 9, 2004, case file 426. The Prosecutor considered that there was insufficient evidence to accuse General del Río for the offenses of conspiracy to commit a crime and misuse of equipment, malfeasance by omission and supposed crimes that occurred by not observing his position as guarantor, original volume No. 11 (evidence file, folio 42334). This decision was made final on March 17, 2004. Cf. Communication of May 12, 2004, of UDH-FGN. Case file 426, original volume No. 11 (evidence file, folio 42357). See also: Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, of February 4, 2013 (evidence file, folio 15506).

³¹² Cf. Appeal for review No. 30510 of February 18, 2009, File 011-11JP (evidence file, folio 1063). Also: Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7624); Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510), of March 11, 2009, p. 6 (evidence file, folio 2119).

³¹³ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510), of March 11, 2009 (evidence file, folio 2143). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15507); Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7625).

³¹⁴ Cf. Sworn statement of Évert Veloza García of January 27, 2009 (evidence file, folio 43453).

³¹⁵ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510), March 11, 2009 (evidence file, folio 43596). Also, Testimony given by Salvatore Mancuso Gómez on March 16, 2011 (evidence file, folio 43955).

³¹⁶ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510), March 11, 2009 (evidence file 43596). Also, arguments of the Public Prosecution Service in review proceeding No. 30510 on February 18, 2009 (evidence file, folio 1075).

³¹⁷ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510), March 11, 2009 (evidence file, folio 43596).

³¹⁸ Cf. Communication of the Prosecutor General. April 27, 2004. Case file 426, original volume No. 12 (evidence file, folio 42455). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15507).

UNDH-DIH,³¹⁹ who took over the case re-opening the investigation against del Río Rojas and, on July 2, 2009, ordered further investigative measures.³²⁰

155. During this re-opening of the investigation, del Río refused to testify, contending that he was unaware of a series of element of the evidence, and that this would prevent him from exercising his right of defense. He also claimed constitutional protection for himself,³²¹ which meant that the Prosecutor General had to hear the case (*supra* para. 163).³²² In a later decision, a new date was set for the hearing of August 26, 2009,³²³ when the accused again refused to testify for the same reasons.³²⁴

156. On September 21, 2009, the 42nd Special Prosecutor of the UNDH-DIH responded to a brief filed by the defense counsel of General del Río requesting, among other matters, the joinder of the proceedings under file No. 2332 with file No. 426.³²⁵ This request was refused based on the argument that the two proceedings were at different procedural stages.³²⁶ Lastly, on November 25, 2009, by a decision of the Prosecutor General, proceedings 11392, 12697 and 11722 against Alejo del Río Rojas were joindered under file No. 426 (formerly 5767).³²⁷

157. With regard to the question of competence that the defense counsel of Rito Alejo del Río had raised during the proceeding (*supra* para. 147), on January 18, 2010, the Prosecutor General declared that he was impeded from hearing the investigation.³²⁸ This decision was revoked by the Plenary Chamber of the Supreme Court on April 12, 2010, ordering him to continue the respective process, in the understanding that the impediment mentioned was groundless.³²⁹

158. On June 17, 2010, the Prosecutor General issued a new decision in which he declared himself incompetent to head the investigation in proceeding No. 5767.³³⁰ On July 8, 2010, the

³¹⁹ Cf. Decision No. 0-1973, of May 18, 2009. Prosecutor General's Office. Case file 426, original volume No. 12 (evidence file, folio 42481). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15507).

³²⁰ Cf. Decision of the 20th Special Prosecutor, UDH-DIH, of June 19, 2009. Case file 426, original volume No. 12 (evidence file, folio 42496).

³²¹ On July 14, 2009, the special agent of the Public Prosecution Service who intervened in the hearing following the re-opening of the investigation that was suspended on July 2, 2009, presented a written request to the 20th Special Prosecutor who was investigating the case, that he should retain competence, because the normative grounds for the constitutional jurisdiction were articles 235(4) and 251(1) of the 1991 Constitution of Colombia (evidence file, folios 42503, 42504 and 42506).

³²² Cf. Statement made by Rito Alejo del Río Rojas before the 20th Special Prosecutor, UDH-DIH. July 2, 2009 (helpful evidence, Case file 426, original volume No. 12, evidence file, folio 42500). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15507).

³²³ Cf. Decision of the 20th Special Prosecutor, UDH-DIH of August 14, 2009. Case file 426, original volume No. 12 (evidence file, folio 42512).

³²⁴ Cf. Statement made by Rito Alejo del Río Rojas on the re-opening of the investigation; 20th Special Prosecutor, UNDH-DIH. Case file 426, original volume No. 12 (evidence file, folios 42515 and 42516).

³²⁵ Cf. Brief with request to joinder and re-open the investigation made by General del Río's defense counsel. Case file 426, original volume No. 13 (evidence file, folio 42528).

³²⁶ Cf. Answering brief of the prosecutor, María Gladys Pabon Lizarazo, head of the 42nd Special Prosecutor's Office, UNDH-DIH, of September 21, 2009. Case file 426, original volume No. 13 (evidence file, folio 42531).

³²⁷ Cf. Decision of the Prosecutor General of November 25, 2009. Case file 426, original volume No. 20 (evidence file, folio 43735).

³²⁸ Cf. Decision of the Prosecutor General of January 18, 2010. Case file 426, original volume No. 20 (evidence file, folio 43746).

³²⁹ Cf. Secretariat's report of April 12, 2010, on the decision of the Plenary Chamber of the Supreme Court of Justice at its regular session of March 18, 2010. Case file 426, original volume No. 20 (evidence file, folio 43771).

³³⁰ In the communication, the Prosecutor General based his decision on the case law of the Supreme Court of Justice of September 2009 (files 31653 and 27032 of September 1 and 11, respectively), and also on the new evidence

20th Special Prosecutor of the UNDH-DIH took over the responsibility for the investigation,³³¹ but on July 19, that year, the Prosecutor declared himself incompetent.³³² On July 28, 2010, the Head of the National Human Rights and International Humanitarian Law Prosecutors Unit assigned the responsibility for the investigation to the 22nd Special Prosecutor.³³³

159. On April 15, 2011, the investigation against del Río Rojas was re-opened.³³⁴ On that occasion, the defense counsel again contested the competence assigned to the UNDH-DIH and, on April 19, 2011, the prosecutor in the case responded rejecting the grounds for the petitions and reaffirming his competence to head the investigation. The accused's defense counsel contested this decision by an ordinary appeal, which was admitted with retroactive effects on May 18, 2011;³³⁵ however, it has not yet been decided, because it was suspended on July 7, 2011, by decision of the senior prosecutor who intervened in the appeal.³³⁶

160. The evidence in the case file reveals that, on October 10, 2011, the 2nd Special Prosecutor of the UNDH-DIH was appointed to head the investigation by a decision of the Head of the Unit.³³⁷ This was because, on September 8, that year, the 22nd Special Prosecutor, who was hearing the case, recused himself as one of the causes for recusal established in the Code of Criminal Procedure applied to him.³³⁸

161. Based on the evidence in the case file, the Court takes note that measures continue to be taken that have advanced the proceedings, and notes the existence, among other elements, of statements,³³⁹ letters rogatory,³⁴⁰ notes,³⁴¹ requests for reports,³⁴² requests,³⁴³ judicial

that resulted in the lifting, in March 2009, of the preclusion declared in March 2004 by the Criminal Cassation Chamber of the Supreme Court of Justice. Consequently, the Prosecutor General decided to abstain from conducting the investigation because the facts being prosecuted were not directly related to the Army, and he forwarded the proceedings to the UNDH-DIH for the prosecutor who was next on the list to take over the hearing of the case. Cf. Decision of the Prosecutor General of June 17, 2010. File 426, original volume No. 20 (evidence file, folio 43788).

³³¹ Cf. Decision of the 20th Special Prosecutor, UNDH-DIH, of July 8, 2010. File 426, original volume No. 20 (evidence file, folio 43808).

³³² The Prosecutor in charge of the 20th Special Prosecutor's Office of the UNDH-DIH understood that the cause for recusal established in article 99 of Law 600 of 2000 applied to him (Code of Criminal Procedure), because he was a friend of the defense counsel of Brigadier General del Río. Cf. Decision of the 20th Special Prosecutor, UNDH-DIH, of July 19, 2010. Case file 426, original volume No. 20 (evidence file, folio 43833).

³³³ Cf. Decision of the Head of the UNDH-DIH, of July 28, 2010. Case file 426, original volume No. 20 (evidence file, folio 43859).

³³⁴ Cf. Appeal filed by the defense counsel of Rito Alejo del Río Rojas. Case file 426 (evidence file, folio 44091). Decision of the 20th Special Prosecutor, UNDH-DIH, of May 18, 2011. Case file 426 (evidence file, folio 4409).

³³⁵ Cf. Decision of the 20th Special Prosecutor, UNDH-DIH, of May 18, 2011. Case file 426 (evidence file, folio 44091).

³³⁶ Cf. Decision of July 7, 2011 of the 62nd Prosecutor delegated to the Superior Court of the Judicial District of Bogotá. Case file 426 (evidence file, folio 44106).

³³⁷ Cf. Decision No. 000228 of the Head of the National Human Rights and International Humanitarian Law Prosecutors Unit. October 10, 2011. Case file 426, original volume No. 21 (evidence file, folio 44171). See also: Decision in which the 2nd Special Prosecutor took over the hearing of the case. December 23, 2011. Case file 426, original volume No. 21 (evidence file, folio 44180).

³³⁸ Cf. Note No. 311 of the 20th Special Prosecutor of the UNDH-DIH, indicating that he was prevented from hearing the case owing to the cause for recusal established in article 99(10) of Law 600 of 2000 – Code of Criminal Procedure (judicial official who has been involved in a criminal or disciplinary investigation in which he has been accused, based on a complaint filed, before the proceedings commenced, by any of the individuals being prosecuted). Case file 426, original volume No. 21 (evidence file, folio 44128).

³³⁹ Cf. Testimony given by Elías Hernando Salas Barco, September 16, 2009, and Testimony of Iván Roberto Duque Gaviria, case file 426, of January 27, 2012, original volume No. 22 (evidence file, folios 44182 and 44213).

³⁴⁰ Cf. Letter rogatory of the 2nd Special Prosecutor to the Colombian Consul in New York for him to receive the testimony of Phanor Andrade, in case file No. 426, March 14, 2012, original volume No. 22 (evidence file, folio 44232).

³⁴¹ Cf. Note of January 27, 2012, addressed to the 48th Prosecutor of the Justice and Peace Unit, requesting certified copies of the clips of various voluntary confessions provided by those demobilized from the Elmer Cárdenas

inspections,³⁴⁴ and requests for evidence.³⁴⁵ The most recent evidence was provided to this Court in February 2013.³⁴⁶

1.1.2. Criminal investigation No. 2332

162. The investigation under file No. 2332 against some members of the “Elmer Cárdenas” paramilitary group and del Río Rojas³⁴⁷ was opened based on the events that occurred on February 27, 1997, owing to the incursion in the settlement of Bijao, the “murder of a protected person,” Marino López Mena, the forced displacement of February 1997, and the offense of conspiracy to commit a crime.

Bloc. Case file 426, original volume No. 22 (evidence file, folio 44222); Note No. 076 D-2 of February 22, 2012, addressed to the Technical Investigation Corps by the Adviser to the 4th Prosecutor of the UNDH-DIH, requesting that it appoint two investigators-analysts. Case file 426, original volume No. 22 (evidence file, folio 44228); Note No. 162 D-2 of May 29, 2012, addressed to the 48th Prosecutor of the National Justice and Peace Unit by the 2nd Special Prosecutor of the UNDH-DIH, requesting copies of the combined voluntary confessions made on April 28, 2010, by member of the AC Elmer Cárdenas Bloc. Case file 426, original volume No. 22 (evidence file, folio 44246); Note No. 680537 of May 28, 2012, addressed to the Mayor of Turbo, to the Turbo Spokesperson, to the Colombian Family Welfare Institute of Turbo, to Social Action of Turbo, and to the Francisco Valderrama Hospital of Turbo, in case file No. 426, requesting a copy of the List of those Displaced from the Urabá Chocóano (Acandí, Riosucio and Unguía) between January 1, 1997, and December 31, 1999. Case file 426, original volume No. 22 (evidence file, folios 44271, 44273, 44275, 44276 and 44278).

³⁴² Cf. Request for information addressed to the Head of the Unit for Attention to and Integral Reparation for the Victims of Chocó, asking him to advise the 2nd Special Prosecutor of the UNDH-DIH under which note or document the list of those displaced from Chocó between 1997 and 1999 had been forwarded to the National Archives, June 25, 2012 (evidence file, folio 44349).

³⁴³ Cf. Request of July 23, 2012, by the 2nd Special Prosecutor, UNDH-DIH, to the Secretariat of the Unit to remove File No. 1701 from the archives, in order to conduct a judicial inspection of the file. Case file 426, original volume No. 22 (evidence file, folio 44370), and Request of September 12, 2012, addressed to the 14th Special Prosecutor, UNDH-DIH, by the 2nd Special Prosecutor, UNDH-DIH, for a copy of the judgment sentencing Alejo Rito del Río in case 2009-063. Case file 426, original volume No. 22 (evidence file, folio 44381).

³⁴⁴ Cf. Judicial inspection of case file No. 297 A, by the 25th Special Prosecutor of the UNDH-DIH, on January 11, 2012. Case file 426, original volume No. 22 (evidence file, folio 44181); Judicial inspection of case file No. 7782, by the 6th Special Prosecutor of the UNDH-DIH, on January 11, 2012. Case file 426, original volume No. 22 (evidence file, folio 44191); Record of judicial inspection by an agent of the Judicial Police attached to the 17th Prosecutor delegated to the Court of the National Justice and Peace Prosecutors Unit, and conducted in case file No. 426, on March 7, 2012. Case file 426, original volume No. 22 (evidence file, folio 44229); Record of judicial inspection conducted on June 6, 2012, in the archives of the office of the Spokesperson of the Municipality of Apartadó related to the Urabá Chocóano displacement between 1997 and 1999, by an agent of the Judicial Police. Case file 426, original volume No. 22 (evidence file, folio 44280).

³⁴⁵ Cf. Request for evidence of May 9, 2102, sent by the 2nd Special Prosecutor, UNDH-DIH, to the Head of the Human Rights Group requesting he authorize a working mission for one of his investigators. Case file 426, original volume No. 22 (evidence file, folio 44243).

³⁴⁶ Cf. Brief of February 8, 2013, requesting that the measures taken by the 2nd Special Prosecutor be sent to the 22nd Special Prosecutor, both of the UNDH-DIH. Case file 426, original volume No. 22 (evidence file, folio 44452).

³⁴⁷ Cf. Report presented by the State with complete and updated information on the status of the investigations related to the facts of the case, of February 4, 2013. In this case the accused are: Luis Muentes Mendoza alias “Vicente el Calvo”, demobilized, member of the AC Elmer Cárdenas Bloc, who has still to be investigated; Fredy Rendón Herrera alias “el Alemán”, demobilized commander of the AC Elmer Cárdenas Bloc, his legal status has been decided, he is in preventive custody for the crimes of murder of a protected person, forced displacement and conspiracy to commit a crime, he remains to be heard in the re-opening of the investigation and to go through the procedure of accepting the charges based on plea bargaining; Diego Luis Hinestroza Moreno alias “Ramiro Roberto Tolamba or Perea,” demobilized member of the AC Elmer Cárdenas Bloc, accepted the plea bargaining procedure and the investigation was forwarded to the Criminal Court of the Special Circuit of Quibdó-Chocó; Marino Mosquera Fernández, pending a hearing in the preliminary investigation proceedings; William Manuel Soto Salcedo, demobilized member of the AC Elmer Cárdenas Bloc, pending a hearing in the preliminary investigation proceedings; Rito Alejo del Río Rojas, Army General; Julio César Arce Graciano, alias “Zc or el Alacrán”, demobilized member of the AC Elmer Cárdenas Bloc, charges against him were brought in a decision of January 21, 2013, and a date was set to hear him in the investigation proceeding; Rubén Darío Rendón Blanquiceth, alias “Móvil 10 or Andrés Rodríguez,” member of the AC Elmer Cárdenas Bloc, charges against him were brought in a decision of January 21, 2013, and a date was set to hear him in the investigation (evidence file, folios 15480 and 15481).

163. In this regard, the State expanded the information indicating that the events investigated under file UNDH-DIH 2332 are those that took place on February 27, 1997, attributed to an armed group, apparently belonging to the “Elmer Cárdenas” illegal armed group, who raided the village of Bijao (Chocó department), and threatened and overpowered some villagers, including Marino López Mena, who was murdered. Furthermore, the events include the forced displacement of persons that could have been caused by this illegal armed group on February 24, 25, 26 and 27, 1997.³⁴⁸ The civil complaint presented by the legal representative of Emedelia Palacios Palacios, widow of Marino López, was admitted in these proceedings.³⁴⁹

164. On July 9, 2003, the Regional Director of Prosecutors, in decision No. 0105, decided “to assign the 15th Prosecutor of Riosucio to investigate the events relating to the murder of Marino López, that took place during bombing operations by presumed members of the Self-Defense Forces on the inhabitants of Riosucio on February 27 and 28, 1997.”³⁵⁰

165. On October 20, 2005, the Prosecutor General, in decision No. 0-3760, assigned the investigation provisionally to a Special Commission for Urabá Antioqueño and Chocóano.³⁵¹

166. On January 25, 2006, in decision No. 0-0121, the Prosecutor General assigned the investigation to the prosecutor delegated to the Special Criminal Circuit Judges who was next in turn, attached to the UNDH-DIH, in Bogota.³⁵²

167. The State informed, and it was not disputed, that, on February 9, 2007, the Judicial Police signed the record of the technical examination of the corpse of Marino López Mena.³⁵³ Following the DNA tests, the osseous remains of Marino López were returned to his family on February 12.³⁵⁴ On April 9, 2007, by decision No. 000059 of the UNDH-DIH, the case was reassigned to the 14th Prosecutor, making him responsible for the investigation.³⁵⁵

168. On December 26, 2008, the 14th Prosecutor of the UDH-FGN declared the preliminary investigation open and ordered that the statements be heard of Luis Muentes Mendoza, Fredy Rendón Herrera, Diego Luis Hinestroza Moreno and Marino Mosquera Fernández, paramilitaries demobilized under Law 975 “Justice and Peace” of 2005.³⁵⁶

³⁴⁸ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7626).

³⁴⁹ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15490). See also: Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7637).

³⁵⁰ Decision No. 0105 of July 9, 2003, of the Regional Director of Prosecutors of Quidbó (evidence file, folio 9879).

³⁵¹ Cf. Decision No. 0-3760 of October 20, 2005, Prosecutor General's Office. (evidence file, folio 9885).

³⁵² Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485). Also, Prosecutor's Office, Indictment, proceedings file 2332, of January 25 (evidence file, folio 17599).

³⁵³ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case. This report indicates that, on February 9, 2007, a judicial inspection was conducted on the premises of the National Institute of Forensic Medicine of Medellín (evidence file, folio 15483).

³⁵⁴ Cf. Institute of Forensic Medicine and Sciences, Form for the delivery or final disposal of a corpse submitted for a forensic autopsy, Northwestern Region – Antioquía Region. Name of deceased: Marino López Mena, death certificate: A2480708 (evidence file, folio 17311).

³⁵⁵ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

³⁵⁶ Cf. Prosecutor General's Office. Indictment decision against retired General Rito Alejo del Río. Case 2332 (evidence file, folio 8898). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

169. On August 29, 2008, the statements were heard of Luis Muentes and Diego Luis Hinestroza.³⁵⁷ On September 3, 2008, the acting prosecutor decided the legal situation of these two paramilitaries imposing preventive detention.³⁵⁸ In the same decision, the prosecutor decided to summon the Commander of the 17th Brigade, Rito Alejo del Río Rojas, to testify in relation to the murder of Marino López Mena.³⁵⁹

170. On September 4, 2008, Rito Alejo del Río Rojas was arrested and, since then, remains “in custody” in a military barracks of the 13th Brigade in Bogota.³⁶⁰

171. On September 5, 2008, the statement of General del Río Rojas was heard, and his legal situation was decided on September 12 that year, imposing preventive detention, as possible co-perpetrator of the crime of murder of a protected person.³⁶¹

172. On December 26, 2008, the 14th Special Prosecutor issued a decision indicting Rito Alejo del Río Rojas as having command responsibility in an organized power structure for the crime of aggravated homicide of which Marino López Mena was the victim.³⁶²

173. On February 24, 2009, the indictment decision was confirmed by the Prosecutors Unit delegated to the Superior Court of Bogota, after it had been appealed by the defense counsel.³⁶³ Consequently, that stage of the procedure was suspended and the proceedings opened against retired General Rito Alejo del Río Rojas passed to the trial stage.³⁶⁴

174. The competence for conducting the trial was assigned to a judge of both civil and criminal cases of the Riosucio Circuit. However, following a request by the prosecutor in the case, by a decision of March 24, 2009, the Supreme Court of Justice ordered the transfer of

³⁵⁷ Cf. Decision of the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit of Bogota, September 3, 2008 (evidence file, folio 9901). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485). Also, the evidence file before this Court contains other statements made during proceedings 2332 by the demobilized paramilitaries Luis Muentes Mendoza (evidence file, folios 17892 and ff., 18392 and ff.) and Diego Luis Hinestroza (evidence file, folios 17164 and ff., 17905, and 17708).

³⁵⁸ Cf. Decision defining the legal situation of Luis Muentes Mendoza and Diego Luis Hinestroza Moreno issued by the 14th Prosecutor of the Human Rights Unit of Bogota (evidence file, folio 9914). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

³⁵⁹ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

³⁶⁰ Cf. Custody record No. 003, of September 4, 2008, signed by the 2nd Special Prosecutor, Human Rights and International Humanitarian Law Unit, addressed to the Battalion Commander of No. 13 Military Police Unit, requesting that Rito Alejo del Río be kept in custody; folio 136, volume, No. 3 (evidence file, folio 9917).

³⁶¹ Cf. 14th Prosecutor of the Human Rights Unit of Bogota. Decision of September 12, 2008, deciding the legal situation of Rito Alejo del Río (evidence file, folio 1512). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

³⁶² Cf. Prosecutor General's Office. 14th Prosecutor, indictment of retired General Rito Alejo del Río, case file 2332 (evidence file, folios 8850 to 8898). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

³⁶³ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485). See also: Note of the Ministry of Foreign Affairs of August 27, 2009, para. 184 (evidence file, folio 7629).

³⁶⁴ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15485).

proceeding No. 2332 to the Judicial District of Bogota.³⁶⁵ The trial was assigned to the Eighth Special Criminal Judge of the Bogota Circuit.³⁶⁶

175. In a communication sent to the 14th Special Prosecutor of the UNDH-DIH in May 2010, the accused Rubén Darío Rendón Blanquicet indicated his wish to enter a plea bargain.³⁶⁷

176. On November 23, 2010, the statement of Carlos Alfonso Velásquez Romero, second-in-command of the 17th Brigade in 1996, was heard by the Eighth Special Court of the Bogota Circuit. In his statement Colonel Velásquez Romero alleged that the Brigade Commander, Rito Alejo del Río, had been unwilling to combat the paramilitary groups decisively.³⁶⁸

177. On May 11, 2011, C.A.F. gave his testimony, and stated that, as a professional soldier in the 17th Brigade, he witnessed the mutual support between the paramilitary groups and the Army.³⁶⁹ Meanwhile, Fredy Rendón Herrera gave his statement on May 12, 2011.³⁷⁰

178. Diego Luis Hinestroza Moreno entered a plea bargain, and to this end, an indictment was drawn up for murder of a protected person, forced displacement, and conspiracy to commit a crime on January 18, 2011.³⁷¹ However, on June 28, 2012, the Criminal Court of the Special Circuit of Quibdó declared that the indictment and Mr. Hinestroza Moreno's acceptance of the charges for the plea bargain were null and, therefore, the judge abstained from handing down an early judgment.³⁷²

179. On August 23, 2012, the Eighth Criminal Court of the Bogota Special Circuit delivered judgment convicting Rito Alejo del Río Rojas as having command responsibility in an organized power structure, in relation to the murder of Marino López Mena.³⁷³ This judgment was appealed by the defense and is being examined by the Superior Court of Bogota.³⁷⁴

180. Regarding the other accused in this proceeding, the Court notes that, on October 26, 2012, the legal situation of Luis Muentes Mendoza and Fredy Rendón Herrera was changed to possible co-perpetrators of the concurrent offenses of aggravated homicide, forced

³⁶⁵ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15487). See also: Note of the Ministry of Foreign Affairs of August 27, 2009, para. 184 (evidence file, folio 7629).

³⁶⁶ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15488).

³⁶⁷ Cf. Communication sent to the 14th Special Prosecutor of the UNDH-DIH signed by Rubén Darío Blandón Blanquiceth. Received by the prosecutor on May 18, 2010 (evidence file, folio 17698).

³⁶⁸ Cf. Testimony of former Army Colonel C.A.V.R. in the trial against retired General Rito Alejo del Río before the Eighth Special Criminal Court (Video; evidence file, folio 9981). See also: Report of May 31, 1996, of C.A.V.R. addressed to the Commander of the Army, Santa Fé de Bogota (evidence file, folios 9985 to 9994).

³⁶⁹ Cf. Prosecutor General's Office. Case file 2332, public hearing of testimony of C.A.F. (evidence file, folio 9996).

³⁷⁰ Cf. Testimony of Fredy Rendón Herrera before the Eighth Special Criminal Court of Bogota, during the proceeding against Rito Alejo del Río Rojas (evidence file, folio 8742). The evidence file before this Court also contains other statements made by Mr. Rendón Herrera (evidence file, folios 18372 and ff., 17361 and ff., 17473 and ff., 18374 and ff., 17870 and ff., 17914 and ff.).

³⁷¹ Cf. Indictment with charges for the plea bargain. 14th Special Prosecutor, UNDH-DIH, January 18, 2011 (evidence file, folio 17644). See also: on January 18, 2011, Mr. Hinestroza Moreno expanded his statement (evidence file, folio 17708).

³⁷² Cf. Interlocutory judgment No. 003 of the Quibdó Special Circuit, of June 28, 2012. In this ruling, the judge ordered that once it was final, the proceeding should be returned to the original court (evidence file, folio 17675).

³⁷³ Cf. Judgment in proceeding 2009-063. Eighth Special Criminal Court of Bogota, August 23, 2012; original volume No. 22 (evidence file, folio 44384). See also: Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15490).

³⁷⁴ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15490).

displacement, and conspiracy to commit a crime, and their preventive detention was retained.³⁷⁵ On September 28, 2012, the legal situation of William Manuel Soto Salcedo was decided, accusing him as possible co-perpetrator of the concurrent offenses of forced displacement, conspiracy to commit a crime, and aggravated homicide, and ordering his preventive detention.³⁷⁶

1.1.3 Other proceedings before the ordinary jurisdiction

181. In response to the President of the Court's request that the State forward "[...] complete and updated information on the actual status of the investigations relating to the context of and the events following the displacement" (*supra* para. 13), evidence was received concerning proceeding No. 1042.³⁷⁷ This proceeding against Luis Muentes Mendoza for the offense of homicide, forced displacement, conspiracy to commit a crime, and threats was opened on June 4, 2001, and is being processed before the 14th Special Prosecutor of the UNDH-DIH. The Court notes that it has received very limited information on the evolution of proceeding No. 1042. The State merely provided information on a few procedural measures with the helpful evidence it forwarded, without sending any documentary support to authenticate these measures.³⁷⁸

1.2. Investigations under the special Justice and Peace procedure

182. According to the information presented, under Law 975 of 2005 or the Justice and Peace Law, 10 members of the Self-Defense Forces who demobilized stated that they had taken part in the events of this case, either in combined voluntary confessions³⁷⁹ or individually.³⁸⁰ Five of

³⁷⁵ Cf. Decision of the 14th Special Prosecutor, UNDH-DIH, of October 26, 2012 (evidence file, folios 18153, 18157, 18168 and 17848).

³⁷⁶ Cf. Decision of the 14th Special Prosecutor, UNDH-DIH, September 28, 2012 (evidence file, folio 17833).

³⁷⁷ The Court observes that the parties have referred to this proceeding with different numbers. Thus, in the file, it appears as proceeding 1410 (Cf. IACHR, Report No. 86/06, para. 30, folios 6962 and 7057) and also as proceeding No. 1042 (evidence file, folios 1392, 4796, 5021 and 5324). The investigation was opened based on the report made by the Human Rights Unit of the Public Prosecution Service, which forwarded documentation in which the Ombudsman's Office and the NGO *Comisión Intereclesial de Justicia y Paz*, among others, report the presumed presence of barricades manned by members of the AUC in the places known as Tumaradó – jurisdiction of the Municipality of Riosucio, Chocó – on the Atrato River and in Sutatá, part of the Los Katios National Park, and the illegal logging operations in the Cacarica River valley. Also, an investigation is underway into the forced displacement that occurred in February 1997 by the communities located in the basins of the Cacarica, Salaquí and Truandó Rivers, in the municipality of Riosucio, caused by the presence of illegal armed groups and their threats. The displaced population took refuge in the urban area of the municipalities of Turbo, Riosucio, and Bahía Cupica, among other places. Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15492).

³⁷⁸ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folios 15492 to 15500).

³⁷⁹ The combined voluntary confessions of the members of the AC Élder Cárdenas Bloc include the statements of: Fredy Rendón Herrera (evidence file, folios 19156 to 19161, 19174, 19186, 19192 to 19199, 19201, 19203 to 19208, and 19212 to 19227); Julio César Arce Graciano (evidence file, folios 19186 and 19187, 19197, 19199 to 19201, 19204 to 19207, 19217, 19220, 19223, 19224 and 19226); Diego Luis Hinestroza Moreno (evidence file, folios 19185, 19222, 19224 and 19225); William Manuel Soto Salcedo (evidence file, folios 19177, 19200, 19211, 19215, 19221 and 19225.); Luis Muentes Mendoza (evidence file, folios 19174 to 19176, 19197, 19210 to 19212, 19215, 19221 to 19222 and 19224); Franklin Hernandez Seguro (evidence file, folios 19189 and 19190, 19213, 19222 and 19225), and Alberto García Sevilla (evidence file, folios 19187, 19222, 19224 and 19225).

³⁸⁰ The following demobilized paramilitaries have testified individually before the FGN-UNJP: Fredy Rendón Herrera, Cf. Video of voluntary confession by Fredy Rendón before the Justice and Peace prosecutor, of June 3, 2009, on DVD "Voluntary confessions of Raúl Emilio Hasbun Mendoza, Fredy Rendón Herrera; F-17, Justice and Peace, Medellín, Subject: (6) Rito Alejo del Río" (evidence file, folio 44538); Voluntary confession, October 24, 2007 (evidence file, folios 19229 to 19231); Voluntary confession, March 13, 2009 (evidence file, folios 19231 to 19234); Voluntary confession, November 26, 2009, on DVD "Operation Genesis 1. Élder Cárdenas Bloc" (evidence file, folio 18456); Diego Luis Hinestroza Moreno, Voluntary confession, April 2, 2008 (evidence file, folios 19246 to 19247); Luis Muentes Mendoza, Voluntary confession, April 22, 2008 (evidence file, folios 19247 to 19249); William Manuel Soto Salcedo, Voluntary confession, July 9, 2008 (evidence file, folios 19235 to 19246); Franklin Hernandez Seguro, Voluntary

them are in preventive detention.³⁸¹ As indicated by the State, and not disputed by the representatives or the Commission, the truth of the events related in voluntary confessions is being verified by the National Justice and Peace Unit of the Prosecutor General's Office (hereinafter "FGN-UNJP").³⁸²

183. Also, the evidence provided by the Prosecutor General's Office reveals that the National Justice and Peace Unit has been preparing a dossier with information and details of different aspects of the "Élmer Cárdenas" paramilitary bloc that includes data on its origin and background,³⁸³ structure,³⁸⁴ ideology,³⁸⁵ the weapons it used,³⁸⁶ the chain of command,³⁸⁷ and the demobilization procedure for its members,³⁸⁸ which reveals the systematic patterns of the illegal activities that characterized the group's actions.

184. However, the FGN-UNJP has little information on the procedural situation of the candidates. The information sent by the Colombian Ministry of Foreign Affairs, although it is not disputed, dates from 2009. Lastly, this Court underlines that there is evidence of the communication of probative elements between the delegated units of the Prosecutor General's Office; that is, between the UNDH-DIH and the FGN-UNJP.³⁸⁹

1.3. Investigation in the disciplinary jurisdiction

185. On June 27, 2002, the Public Prosecution Service opened a disciplinary investigation under file No. 155-73307-2002, against del Río Rojas and the Army officers Jaime Arturo Remolina, Rafael Alfredo Arrázola, Guillermo Antonio Chinome and Luis Elkin Rentería based on the denunciations of the soldier Oswaldo de Jesús Giraldo Yepes concerning the relationship of the 17th Brigade with the paramilitaries of the Urabá area. This investigation was archived on December 5, 2002, and General del Río Rojas was acquitted. The Public Prosecution Service

confession August 6, 2008 (evidence file, folio 19235); Rubén Darío Blanquicet, Voluntary confession, July 17, 2008 (evidence file, folios 19249 to 19251); Alberto García Sevilla, Voluntary confession, October 28, 2008 (evidence file, folios 19251 to 19253); C.A.F. Alvarez, Voluntary confession, May 8, 2008 (evidence file, folios 19251); Julio César Arce Graciano, Voluntary confession, May 2, 2008, on DVD "Clips VL. Operation Genesis. No. 1" (minute 46:39) (evidence file, folio 45236). See also: Edwin Alberto Romero Cano, Voluntary confession, March 24, 2011, on DVD "Clips VL. Operation Genesis. No. 1" (minute 42:32) (evidence file, folio 45236).

³⁸¹ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7630). See also: Video of indictment in the hearing on the partial indictment of Luis Muentes Mendoza. Medellín, Justice and Peace Court, 2008 (evidence file, folio 1403); Video of indictment in the hearing on the partial indictment of Diego Luis Hinstroza Moreno (evidence file, folio 1472). There is only evidence of the indictment of these two candidates.

³⁸² Cf. Note of the Ministry of Foreign Affairs of August 27, 2009 (evidence file, folio 7630).

³⁸³ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Genesis: context immediately before it was planned (evidence file, folios 44465 to 44535).

³⁸⁴ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón in voluntary confession made on November 26, 2009 (evidence file, folios 45250 to 45443).

³⁸⁵ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Ideology of the organization (evidence file, folios 45238 to 45248).

³⁸⁶ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Weapons (evidence file, folios 45459 to 45489).

³⁸⁷ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Chain of command (evidence file, folios 45490 to 45512).

³⁸⁸ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Eligibility: demobilization procedure (evidence file, folios 45513 to 45526).

³⁸⁹ The file corresponding to proceedings No. 2332 before the UNDH-DIH of the Prosecutor General's Office contains different statements (voluntary confessions) made by those demobilized under the Justice and Peace procedure (evidence file, folios 17164, 17892, 18392, 17905, 18372, 18374, 17870, among others).

declared *res judicata* by establishing that the same facts had been decided in the investigation under file No. 001-14956.³⁹⁰

186. Disciplinary proceeding 001-14956 commenced on September 9, 1996, in order to investigate two instances of possible disciplinary offenses. One of the events investigated was the multiple homicide of four peasants that had taken place on September 7, 1996, in the district of San José de Apartadó. According to the witnesses, the deaths were due to the victims' participation in negotiations for the return of the displaced peasant families provisionally accommodated in the Turbo sports arena to their places of origin. The second incident investigated related to the coercion and humiliating and derogatory treatment by Alejo del Río Rojas of the members of the negotiating committee for the return of some of those displaced in the municipalities of Turbo and Apartadó to their places of origin. However, it was verified that these insults and mistreatment had not been recorded in the minutes of the agreements signed with the peasants who were peacefully occupying the Turbo sports arena. Regarding the first incident examined, certified copies of the case file of the massacre were ordered in order to assess the possible responsibility of a soldier who was accused by witnesses as a possible participant in the crime. However, on December 14, 1999, the Public Prosecution Service (hereinafter "PGN") ordered that the file be archived.³⁹¹

187. Other disciplinary investigations were also opened, including the procedure under file No. 155-58322-2001, to which were joindered investigations Nos. 155-58323-2001 and 155-58324-2001 in 2002, but they were archived for lack of evidence on August 12, 2005.³⁹² In addition, investigation No. 155-62251-2001 was opened against the members of the Army, Riosucio, Chocó (and others to be determined), for omissions by the Armed Forces as a result of their failure to intervene following reports of paramilitary presence in Cacarica during 1999 and 2000. On May 31, 2002, the investigation was extended for six months,³⁹³ and on January 23, 2004, it was archived for lack of evidence.³⁹⁴ Investigation No. 022-090508-2003 against the Army for failing to respond to incursions of illegal armed groups in Cacarica has also been archived.³⁹⁵

188. In 1999, disciplinary investigation No. 155-33124-1990 was also opened against the Director General, the Secretary General and the Deputy Director of Sustainable Development of Chocó-CODECHOCÓ. On December 19, 2002, a single instance judgment was delivered sentencing the three defendants to removal from their functions and ineligibility to exercise public functions for five years.³⁹⁶ The decision was appealed by the defense, and confirmed by the Disciplinary Chamber regarding the charges based on which they had been convicted, with

³⁹⁰ Cf. Public Prosecution Service. Decision issued on December 5, 2002 (evidence file, folios 2242). See also: Jaime Rodríguez Matiz, Adviser to the Human Rights Unit of the Public Prosecution Service. January 10, 2010 (evidence file, folio 45196).

³⁹¹ Cf. Communication of the Public Prosecution Service in File No. 001-14956 (evidence file, folio 45284).

³⁹² Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15512). Case file No. 155-58322-2001 was opened against officials of the Ministry of Transportation in Bogota and others to be determined, for possible acts or omissions by public servants in relation to dredging work on the Perancho and Peranchito Rivers and clearing the navigable waterways on the Cacarica River in 2000 (evidence file, folio 2246). Investigations 155-58323 and 155-58324 against officials of the Social Solidarity Network of the Presidency of the Republic and against officials of the Ministry of Transportation in Bogota, respectively, for presumed failure to comply with the delivery of food and medicines, respectively, to the displaced in 2002 (evidence file, folio 2246).

³⁹³ Cf. Report of August 12, 2003, of the State of Colombia on MC 70/99 (evidence file, folio 2246).

³⁹⁴ Cf. Report dated February 4, 2013, presented by the State with complete and updated information on the status of the investigations related to the facts of the case (evidence file, folio 15512).

³⁹⁵ Cf. Ministry of Foreign Affairs, 27th report of the State of Colombia on MC 70/99. March 28, 2006 (evidence file, folio 4981).

³⁹⁶ Cf. Report of August 12, 2003, of the State of Colombia on MC 70/99 (evidence file, folio 2246).

the exception of one of the charges, of which the Director and the Secretary General were acquitted.³⁹⁷

Investigation in the disciplinary jurisdiction No. 48718-2000 against Rito Alejo del Río Rojas

189. In 2000, the Public Prosecution Service opened a disciplinary investigation (file No. 155-48718-2002) against del Río Rojas as a result of the denunciations filed by the *Comisión Intereclesial de Justicia y Paz*. This referred to the alleged connections between the 17th Brigade and the paramilitary groups, the attacks that occurred during Operation Genesis, and also the murders, disappearance and forced displacement of the communities belonging to the municipality of Rio Sucio, district of San José de Apartadó and Turbo, during the first half of 1997.³⁹⁸

190. On January 27, 2003, in this investigation, it was decided to declare *res judicata* with regard to the humiliation and mistreatment of some members of the negotiating committee for the return of the displaced families to their place of origin, of which Mr. del Río had been accused, because this had already been assessed in investigation No. 001-14956 and archived.³⁹⁹

191. Furthermore, the prescription of the disciplinary case was declared in relation to the supposed responsibility of Rito Alejo del Río Rojas in the indiscriminate bombing of the inhabitants of Riosucio, Chocó, that violated the principles of distinction and proportionality to the detriment of the civilian population that was not involved in the conflict, because the legal time frame of five years from the date of the facts in 1997 had expired.⁴⁰⁰

1.4. Judicial actions filed based on the forced displacement

192. In 1997 at least 13 applications for *amparo* were filed before courts of the Medellín, Turbo, Riosucio, and Bogota judicial circuits⁴⁰¹ owing to the forced displacement of the Cacarica communities. These applications sought protection of the rights not to be displaced, to life, equality, ethnic diversity, peace, housing, social security, food, and the rights of the child, owing to the displacement and the precarious and inhuman subsistence conditions. In addition, the re-establishment of the situation before the displacement was claimed, in appropriate

³⁹⁷ Cf. Judgment of the Disciplinary Chamber, Public Prosecution Service. August 22, 2003 (evidence file, folio 4316). See also: Report of the State of Colombia in MC 70/99. August 12, 2003 (evidence file, folio 2246). The conducts investigated stemmed from the failure to protect the environment in the jurisdiction of the municipality of Riosucio (Chocó); irregularities in the processing of the punitive proceedings opened for the illegal logging; irregularities in the procedures to grant authorization to the black communities of the Cacarica to exploit the forest; obstruction of the actions of the Public Prosecution Service in cases; overstepping authority by granting punitive powers to private individuals, and different irregularities associated with the foregoing. Nine, five and two charges were brought against the Director General, Secretary General and Deputy Director, respectively; all the sentences were confirmed, except one for the Director and Secretary of which they were acquitted (judgment of the Disciplinary Chamber, Public Prosecution Service. August 22, 2003. Evidence file, folio 4316).

³⁹⁸ Cf. Public Prosecution Service. Proceedings 155-48718-2000 (evidence file, folio 46256).

³⁹⁹ Cf. Public Prosecution Service. Proceedings 155-48718-2000 (evidence file, folio 46258).

⁴⁰⁰ Cf. Public Prosecution Service. Proceedings 155-48718-2000 (evidence file, folios 46262 and 46263).

⁴⁰¹ Cf. Applications for *amparo* filed by Rosalba Córdoba Rengifo, Pascual Ávila Carmona, Pedro Manuel Pérez Florez against the President of the Republic in May 1997 (evidence file, folios 1099 to 1137); Application for *amparo* filed by Hermenegilda Mosquera Murillo against the President of the Republic (evidence file, folios 1139 to 1148); First instance ruling on *amparo* of the Turbo Civil Court of May 29, 1997, for eight applicants (evidence file, folios 1474 to 1481); and Cf. Complaint on non-compliance with rulings on applications for *amparo* against the President of the Republic filed by Antonio René 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 J.A.Q. before the Civil Circuit Judge of Turbo, Antioquia on August 12, 1997 (evidence file, folios 2272 to 2277).

conditions, as well as compliance by the Government with the Plan of Attention to the Displaced Population.⁴⁰² On May 27, 1997, the President of the Republic responded to these actions collectively indicating: (a) that the purpose of the application for *amparo* was not to protect collective rights; (b) that the Armed Forces did not tolerate or sponsor the presence of illegal armed groups, and (c) that the Government had set up a committee to attend to those displaced.⁴⁰³

193. Of the application for *amparo* that were filed, eight were decided in favor of the applicants.⁴⁰⁴ The rulings against them were justified by: (a) that *amparo* was not a mechanism to protect collective rights; (b) lack of territorial competence, because the events had occurred on territory outside the court's jurisdiction; (c) that the right to peace and the application of international treaties could not be protected by the application for *amparo*, owing to its exceptional nature; (d) that the danger to life, food and work had not been proved, and (e) that the displacements of the civilian population in Colombia were due to the fratricidal struggle that illegal groups had been engaged in for many years.⁴⁰⁵

194. The favorable decisions established that the displaced "shall be provided with adequate conditions of security, as stated by Ernesto Samper Pizano, President of the Republic of Colombia, in the response referred to in the grounds for this decision."⁴⁰⁶

195. A complaint was filed in the courts against the President of the Republic for non-compliance with, contempt of, and legal fraud with regard to a judicial ruling.⁴⁰⁷ This complaint was rejected on September 10, 1997, considering that the Government was complying with the decisions of the courts, and referring to orders issued for the Armed Forces to protect those displaced during their return.

196. On December 13, 1999, the Vice President of the Republic signed a series of agreements with the displaced communities of the Cacarica River basin, undertaking to request the investigation agencies and the courts to provide periodic reports on the status of the investigations, those responsible for the forced displacement, and the murders.⁴⁰⁸

⁴⁰² Cf. Applications for *amparo* filed by Rosalba Córdoba Rengifo, Pascual Ávila Carmona and Pedro Manuel Pérez against the President of the Republic in May 1997 (evidence file, folios 1099 to 1137). See also: Application for *amparo* filed by Hermenegilda Mosquera Murillo against the President of the Republic (evidence file, folios 1139 to 1147).

⁴⁰³ Cf. First instance ruling on *amparo* of the Turbo Civil Court of May 29, 1997, for eight applicants, mentioning the response of the President (evidence file, folios 1474 to 1481).

⁴⁰⁴ Cf. Denunciation of non-compliance with judgments on applications for *amparo* against the President of the Republic filed by Antonio René 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 J.A.Q. before the judge of the Turbo Civil Circuit, Antioquia, on August 12, 1997 (evidence file, folios 2272 to 2277).

⁴⁰⁵ Cf. Rulings issued by the 3rd and 6th Judges of the Medellín Civil Circuit on May 6, 1997, rejecting the applications for *amparo* filed by Rosalba Córdoba Rengifo, Pascual Ávila Carmona and Pedro Manuel Pérez Flores based on lack of competence (evidence file, folios 2250 to 2269).

⁴⁰⁶ First instance ruling on *amparo* of the Turbo Civil Court of May 29, 1997, for eight applicants (evidence file, folio 1480).

⁴⁰⁷ Cf. Denunciation of non-compliance with judgments on applications for *amparo* against the President of the Republic filed by Antonio René 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 J.A.Q. before the judge of the Turbo Civil Circuit, Antioquia, on August 12, 1997 (evidence file, folios 2272 to 2277).

⁴⁰⁸ Cf. Record of agreement concerning the return between the communities displaced from the Cacarica river basin provisionally settled in Turbo, Bocas del Atrato and Bahía Cupica and the national Government of December 13, 1999 (evidence file, folios 1632 to 1656).

IX MERITS

197. Even though this case has been processed as “Marino López *et al.*” and as “Operation Genesis,” the Commission and the representatives have alleged violation of the Convention in relation to a broader factual framework described in the merits report. Also, in addition to alleging that the State was responsible for the death of Mr. López and for the forced displacement of the communities, presumably as a result of the bombing carried out in the context of Operation Genesis, it was also alleged that this displacement occurred because of activities of collaboration, acquiescence or connivance between members of the Armed Forces and the paramilitary groups that took part in the so-called “Operation Cacarica.” Furthermore, it was alleged that the State is responsible for the conditions faced by those who were displaced in both Turbo and Bocas de Atrato in the years following the events of February 1997, as well as for the dispossession and illegal exploitation of their communal territories before, during and after those events.

198. In this regard: (a) on February 24, 1997, the military counterinsurgency operation known as “Genesis” was initiated in the area of the Salaquí and Truandó Rivers, municipality of Riosucio, Chocó, during which at least seven objectives established in the respective military operations order were attacked (*supra* para. 101); (b) in parallel and simultaneously, within the framework of what later became known as “Operation Cacarica” by the authorities who investigated the events, paramilitary units of the “Chocó Bloc” and of the “Pedro Ponte” Group moved into the area of the Cacarica River basin, several kilometers to the north of the place where Operation Genesis was being implemented, threatening and terrorizing the inhabitants of the region, ordering them to abandon their possessions and displace (*supra* para. 102); (c) during these incursions, on February 26, 1997, these paramilitary units killed Marino López in the village of Bijao (*supra* para. 108), and (d) over a period of time that partly coincided with the implementation of Operation Genesis, a large group of inhabitants of the Cacarica river basin was forced to displace to Turbo, Bocas de Atrato and the Republic of Panama (*supra* para. 111). After the forced displacement, these groups of people faced difficult, unsafe and even precarious living conditions in the places where they settled provisionally, following which several hundred of these people returned to territories in the Cacarica region.

199. Consequently, in order to determine the scope of the State’s responsibility in relation to these events, the Court will analyze the following: 1. Operation Genesis and the paramilitary raids (“Operation Cacarica”) as causes of the forced displacement of the communities of the Cacarica river basin and of the death of Marino López (Articles 4(1), 5(1) and 22 of the Convention); 2. The condition of displacement faced by the communities following the events of February 1997 (Articles 5(1), 11, 17, 19, 22 and 24 of the Convention); 3. The dispossession and illegal exploitation of the territories of the Afro-descendant communities of the Cacarica region (Article 21 of the Convention), and 4. The investigations and criminal and other proceeding (Articles 8(1) and 25 of the Convention).

IX.1

“OPERATION GENESIS” AND THE PARAMILITARY INCURSIONS (“OPERATION CACARICA”) AS CAUSES OF THE FORCED DISPLACEMENT OF THE COMMUNITIES OF THE CACARICA RIVER BASIN AND THE DEATH OF MARINO LÓPEZ (Articles 4, 5 and 22 of the Convention)

A. Arguments of the Commission and of the parties

Rights to life and to personal integrity

200. The Commission affirmed that, in the instant case, the State had “ordered and executed a military operation, during which the bombing caused harm to the civilian population, without preventive or protective measures having been taken.” Regarding the counterinsurgency

military operation known as “Operation Genesis,” it indicated that the State had “general and special duties to protect the civilian population under its care, derived from international humanitarian law,” and observed that the bombing during this operation, “was carried out indiscriminately,” without respecting the pertinent provisions of international humanitarian law that, in this case, are the principles of distinction, proportionality and precaution. It also indicated that these “bombings [...] 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.” The Commission also indicated that there were “clear indications about the operational coordination between members of the Army and paramilitary groups,” in particular, “the dynamic of the development of both operations.”⁴⁰⁹

201. Regarding the death of Marino López, the Commission indicated that this was not an isolated event, but “took place against a predetermined background and with a specific objective: to terrorize the population to achieve its forced displacement.” It added that, “beyond the assessment of the evidence on the material responsibility for the torture and murder of Marino López, the criteria of State responsibility must be applied for the acts committed by members of a paramilitary group, given that it did not act with due diligence to adopt the measures required to protect the civilian population in keeping with the circumstances described.” Consequently, the Commission indicated that the human rights violations that were committed on the occasion of the torture and extrajudicial execution of Marino López can be attributed to the State, as well as failure to comply with the obligation to take the necessary measures to prevent them and to protect his life in violation of Articles 4(1), 5(1) and 5(2) of the Convention, in relation to its Article 1(1).

202. The Commission also considered that both the said torture and the extrajudicial execution of Marino López had also resulted in the international responsibility of the State owing to the violation of the right to personal integrity of his next of kin, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument.

203. The representatives agreed with the Commission and added that “[t]he responsibility of the State of Colombia for the violation of the right to life in this case is based on two circumstances: the first, owing to the violation of the right of Marino López not to be deprived of his life arbitrarily and, second, owing to the State’s failure to comply with its obligation to protect and ensure the creation of conditions for those persons subject to its jurisdiction to be able to enjoy life in decent conditions.”⁴¹⁰ The representatives indicated that the State was also responsible for the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture because the treatment of which Marino López was a victim also accorded with the definition of torture. Lastly, they indicated that “the murder of Marino López has not been investigated effectively and, even today, none of those responsible has been convicted, nor have those who benefited from it been identified or punished”; thus, the State “failed to comply with mandates of the Convention concerning respecting and ensuring inalienable rights.”

204. The representatives added that the human rights violations should be interpreted taking into consideration the fact that the victims were Afro-descendants, the principles and norms of

⁴⁰⁹ Similarly, the Commission noted that, during the paramilitary incursions, acts of violence were perpetrated against the members of the Cacarica communities and stressed, in particular, accusations, shooting to intimidate the population, throwing grenades onto the roofs of dwellings, ransacking property and burning buildings, together with the order to displace to Turbo. The Commission also indicated that, from a comprehensive reading of the context, the background and the events of the present case, in the area and at the period of the events, “a systematic pattern of operations of the kind described” existed, under which the acts were perpetrated against a background of “systematic violence suffered by members of the Cacarica Afro-descendant communities, which constitutes a crime against humanity.” Lastly, it stated that, according to the rules of sound judicial discretion, it was “implausible” that paramilitary forces had been able “to enter so freely and operate, without interruption, in an area where the Colombian Armed Forces were present, committing a series of extremely serious and large-scale crimes over several days.”

⁴¹⁰ They stated that the events described constituted a violation of Article 4(1) of the Convention, because they show that the State, through members of the paramilitary strategy and in the context of Operation “Genesis” violated that right to the detriment of Marino López.

international humanitarian law, and their character of crimes against humanity, because they took place in a context of systematic attacks on the civilian population.

205. Meanwhile, the State indicated that Operation Genesis was a legitimate military operation; that it was planned, prepared, executed and consolidated under the Constitution, observing the parameters defined by international humanitarian law during all its stages, and with the participation “exclusively [of] regular troops” members of the Colombian Military Forces.⁴¹¹ Similarly, the State indicated that Operation Genesis was planned, designed and implemented in accordance with international humanitarian law and “the use of force was addressed only and exclusively against military objectives that had been duly and carefully identified during its planning.” The State denied that this operation was the cause of the forced displacement of the inhabitants of the Cacarica River basin, because it was conceived to be executed [...] in the areas of the basins of the Salaquí and Truando Rivers,” and not there; and also because the “forced exodus resulted from an illegitimate order given by the FARC.”

206. The State also argued that if it were established that the possible fear that might be caused by the legitimate use of force, and the decisions taken by the population based on that fear give rise to the international responsibility of the State, “it would be impossible for [the State] to comply not merely with its right, but with its obligation, to try and neutralize those who commit violent acts, and to combat crime.”

207. Furthermore, the State denied the assertion by the representatives of the presumed victims that a paramilitary strategy existed that was a generalized policy of Colombia. In this regard, it affirmed that it had never been the State’s policy to act in conjunction with the illegal self-defense groups, or allow or tolerate, by act or omission, their criminal activities. “The existence of the paramilitary movement, and its unfortunate and casuistic connivance with some members of the State’s Armed Forces have been recognized previously by the Court [...], but in none of those cases did the Court consider that the State had an institutional policy addressed at encouraging or strengthening the illegal self-defense groups.”

208. The State also indicated that, in this case, the circumstances of a systematic pattern alleged by the Commission were not present, and that the expression “crime against humanity” could not be understood unless it was “to assess the legal consequences of the violations that have been alleged in the case and that, therefore, this assessment lacks legal consequences as regards the domestic criminal investigations that are underway.”⁴¹²

209. Regarding the death of Mr. López Mena, the State affirmed that “this deplorable act, the authorship of which has been claimed by those demobilized from the illegal self-defense groups [...] bears no relationship to, and even less is associated with, the process of planning, preparation and execution of Operation Genesis.” It also asserted that “there is no evidence based on which it can be inferred that [regular troops took part] in the execrable murder of Marino López Mena” or that the forced displacement of the inhabitants of the Cacarica River basin can be attributed to this. Furthermore, the State indicated that it cannot be held internationally responsible for the violation of his right to life because it was not State agents who murdered him, neither was it State agents who gave the order to kill him, and “above all, State agents were not present on the day the events occurred.”⁴¹³

⁴¹¹ It also observed that “the operations carried out by the Air Force were executed exclusively over previously identified military objectives; they sought to neutralize illegal armed groups that were undermining public order, and were thus in keeping with the constitutional mandate and the goal of protecting the civilian population and its property.”

⁴¹² It added that, according to “the Court’s case law, in order to affirm the existence of (and even to characterize) a pattern, it is not sufficient to argue that there was generalized violence or that this violence was perpetrated against members of one group.” It indicated that it was “necessary to establish a very specific moment and a *modus operandi* for the conducts, which clearly did not occur in this case.”

⁴¹³ In this regard, it underlined that the judgment delivered by the Eighth Criminal Court of the Bogota Special Circuit on August 23, 2012, indicated that “the acts were committed only and exclusively by members of the illegal self-defense groups or paramilitary groups, without any type of collaboration or acquiescence by Colombian State agents.”

210. In this regard, it indicated that the theory of the international responsibility of the State is based on customary law, even in relation to human rights, and that “the risk theory according to which the State responds merely because it is the State, has no legal basis.”⁴¹⁴

Freedom of movement and residence

211. The Commission and the representatives argued that, as a result of the bombing during ‘Operation Genesis,’ the paramilitary incursions in the Cacarica river basin, and the acts of violence that occurred in this context, which included the torture and death of Marino López, as well as the threats made by the paramilitaries against the civilian population, the Afro-descendant communities, and especially the women and children, the population was obliged to forcibly displace. Accordingly, the State was responsible for the violation of Articles 2, 5 and 17 of the Convention in relation to Articles 11(1), 19, 22 and 24 of this instrument.

212. The Commission emphasized that the State had incurred international responsibility for the forced displacement on two different but interrelated levels: for its active role in originating it, and for the failure to provide an adequate and effective response following it.

213. The representatives affirmed that the State had “severely violated the right to freedom of movement of the victims of this case,” based on “three fundamental elements to establish this responsibility”: (a) the “absolute restriction of freedom of movement of the members of the communities on the days when the paramilitaries and the soldiers carried out the incursion in the Cacarica river basin”; (b) “the massive forced displacement of the communities of the Cacarica, originated by the State itself by the action of the Armed Forces and the paramilitary strategy, which it directed towards Turbo,” and (c) the fact that the “State has not taken measures to ensure the integral return of the communities to their territories, and to their family and community life.”

214. The representatives asked that the Court bear in mind the “State’s responsibility in light of international humanitarian law [...] in accordance with the obligations to respect and to ensure” under Article 29 of the Convention; the aggravated responsibility of the State because the facts took place within a “pattern of systematic violence against the civilian population that severely affected a human group in a situation of evident vulnerability,” and because the investigation into the facts “has not been conducted in keeping with the standards of due diligence.” Lastly, the representatives also considered that the facts of this case should be classified as crimes against humanity, insofar as “there was a plan to commit a systematic attack against the Afro-descendant communities that inhabit the Cacarica River basin.”

215. The State affirmed its “rejection and disagreement with the position of the Commission and of the representatives indicating that [the State] had the overall and abstract responsibility for the existence of the illegal armed groups, known as self-defense or paramilitary groups.” It also underscored the “absence of evidence” that would prove “the causal nexus between the displacement alleged by the ‘victims’ and the events that occurred between February 24 and 27, 1997, at the time of Operation Genesis”. Nevertheless, and as an example of the efforts made to attend to and resolve the phenomenon of displacement in the region, the State outlined “a series of measures, actions and policies implemented in good faith as a result of what happened and that included monitoring the return to the Cacarica region of the displaced communities that had settled in Turbo, Bahía Cupica and Bocas del Atrato.” On this basis, it concluded that “the forced displacement of the inhabitants of the Cacarica cannot be attributed to the State, because, as described, the civilian population was not, and is not, an objective of operations undertaken by the Colombian Armed Forces.”

⁴¹⁴ The State mentioned that, although there is a first instance judgment convicting General Rio for the crime against Marino Lopez, “this is based on the theory of the ‘command responsibility’ in an organized power structure,” which “supposes that the accused is part of the criminal organization, not that the criminal organization acted ‘under the instructions or direction and control of the State’”; thus it considered that, “in any case, the murder of Marino Lopez would be only and exclusively the responsibility of those who are sentenced and convicted, when the case is *res juzgata*, and their conduct could never give rise to the international responsibility of the State.”

216. The State also observed that, in “these proceedings it has been proved sufficiently that the mobilization of the population of the communities that inhabit the river valley was not caused by an act or omission that can be attributed to State agents.” Thus, it indicated that “the displacement was a *de facto* situation that was not caused by the Armed Forces,” and it underlined the “series of actions [undertaken] in favor of the displaced.”⁴¹⁵

B. Considerations of the Court

217. The right to life occupies a crucial place in the American Convention, because it is the essential presumption for the exercise of the other rights.⁴¹⁶ States have the obligation to create the conditions required so that violations of this inalienable right do not occur and, in particular, the duty to prevent their agents from violating it. This active protection of the right to life by the State involves not only its legislators, but every State institution and also those persons who must safeguard security, whether they are its police forces or its armed forces.⁴¹⁷

218. Furthermore, the American Convention establishes the right to personal, physical and mental integrity and its infringement “constitutes a type of violation that has different degrees [...] the physical and mental effects of which vary in intensity according to endogenous and exogenous factors that must be demonstrated in each specific situation.”⁴¹⁸ The Court has also maintained on other opportunities that the mere threat that a conduct prohibited by Article 5 of the Convention may occur, when this is sufficiently real and imminent, may, in itself, violate the right to personal integrity.⁴¹⁹

219. Meanwhile, Article 22(1) of the Convention recognizes the right to freedom of movement and residence and not to be expelled from the territory of the State in which a person is legally. Freedom of movement is an essential condition for a person to evolve freely.⁴²⁰ Also, by an

⁴¹⁵ The State indicated, specifically, that the “the Government’s first direct approach to the issue was in CONPES document 2804 of 1995, in which it approved the National Program for Comprehensive Assistance to People Displaced by Violence. It added that, owing to institutional shortcomings, a new CONPES document was issued in 1997, No. 2924 entitled National System for Comprehensive Assistance to People Displaced by Violence, which modified the institutional framework previously proposed. [...] Nevertheless, in view of the urgency of the situation, the Executive and the Legislature combined efforts and Law 387 of 1997 was enacted. This law ordered comprehensive attention to the displaced population based on three stages of attention to displacement: Prevention, Humanitarian attention, and Economic stabilization [...]” The State indicated that, “although, at the time of the events, Law 387 of 1997 was not in force adopting measures to prevent forced displacement, and to provide attention, protection, and economic stabilization and consolidation to those displaced internally owing to the violence in the Republic of Colombia, this law came into force on July 18 that year and, as of that time, attention to and reparation for those displaced came under the coordination of the former Social Solidarity Network which carried out activities to strengthen the management mechanisms and instances that, at the different territorial levels, implemented the System of Comprehensive Attention to the Displaced Population.” “The State: (a) provided emergency humanitarian assistance to the population that moved from the Cacarica River basin to Bocas del Atrato and to the municipality of Turbo; (b) in order to ensure the sustainability of the return of the inhabitants, it created a verification commission with the participation of a substantial number of Government ministries and institutions and international Governments and cooperation agencies, as well as representatives of the presumed victims; (c) within this framework, programs on health, housing, production projects, and family reunification and attention were implemented, among many other actions designed to attend to the displaced population, and (d) the Government also ordered the award of collective land titles over more than 100,000 hectares to the communities of the river basin.”

⁴¹⁶ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 190.

⁴¹⁷ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, paras. 144 and 145, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 190.

⁴¹⁸ *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 191.

⁴¹⁹ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, para. 165, *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 191.

⁴²⁰ Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 110, and *Case of the Massacres of El Mozote and nearby places v.*

evolutive interpretation of Article 22(1) of the Convention, taking into account the applicable norms of interpretation indicated in Article 29(b) of the Convention, this Court has considered that the said article protects the right not to be forcibly displaced within a State Party.⁴²¹

220. Furthermore, the Court recalls that the obligation to ensure freedom of movement and residence must also take into consideration the actions undertaken by the State to ensure that the displaced populations are able to return to their places of origin without running the risk of having their rights violated. In this regard, the Court reaffirms that the State's obligation to protect the rights of displaced persons involves not only the duty to adopt measures of prevention, but also to provide the conditions required for a decorous and safe return to their usual place of residence or their voluntary resettlement in another part of the country.⁴²² To this end, their full participation in the planning and management of their return or reinsertion must be guaranteed.⁴²³

221. Similarly, since the events of this case took place in the context of a non-international armed conflict, the Court finds it useful and appropriate, as it has on other occasions,⁴²⁴ to interpret the scope of the treaty-based obligations in a way that is complementary with the provisions of international humanitarian law, bearing in mind the latter's specificity in this area,⁴²⁵ especially the Geneva Conventions of August 12, 1949;⁴²⁶ Article 3 common to the four Conventions; Protocol II additional to the Conventions (hereinafter also "Additional Protocol II") to which the State is a party,⁴²⁷ and customary international humanitarian law.⁴²⁸

222. It should be recalled that, in other cases, the Court has had the opportunity to analyze the State's responsibility taking into considerations some relevant principles of international humanitarian law, namely the principles of distinction, proportionality and precaution in the use of force in the context of non-international armed conflicts.⁴²⁹ In addition, when situations of displacement occur in this type of conflicts, the regulations on displacement contained in Additional Protocol II are also particularly useful for the application of the American Convention. In this regard, Article 17 of this Protocol prohibits 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. Should such displacements have to be carried out, "all possible measures

El Salvador. Merits, reparations and costs, para. 186.

⁴²¹ Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 188, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, para. 186.

⁴²² Cf. *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 149, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, para. 188.

⁴²³ Cf. *Case of Chitay Nech et al. v. Guatemala*, para. 149, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, para. 188.

⁴²⁴ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 179, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 187.

⁴²⁵ It should be recalled that international humanitarian law must be applied by the parties in the context of non-international armed conflicts, provided that the events correspond to situations that occur because of and during an armed conflict. In this case, there is no dispute about the fact that the situation must be analyzed by the Court interpreting the American Convention in light of the pertinent provisions of international humanitarian law. Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, footnote 254.

⁴²⁶ See, in particular, Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted on August 12, 1949, at Geneva. Entry into force: October 21, 1950, and ratified by Colombia on November 8, 1961.

⁴²⁷ Colombia has been a party to Additional Protocol II to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts since August 14, 1995.

⁴²⁸ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 187.

⁴²⁹ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, paras. 212, 214 and 216.

shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.”⁴³⁰

223. Regarding the above-mentioned rights, the Court reiterates that their recognition means not only that the State must respect them, but also requires that it adopt all appropriate measures to ensure them, in compliance with its general obligations established in Article 1(1) of the American Convention.⁴³¹ Special duties derive from these general obligations, and they can be determined based on the specific needs of protection of the subject of law, due to either his personal situation or to the particular situation in which he finds himself.⁴³² This entails the duty of the States to organize the whole government apparatus and, in general, all the structures by which public powers are implemented, so that they are able to ensure, legally, the free and full exercise of human rights.⁴³³ As part of this obligation, the State has the legal obligation “to prevent, reasonably, human rights violations, and to investigate, seriously with the means available to it, the violations that have been committed within its sphere of jurisdiction in order to identify those responsible, impose the pertinent sanctions, and ensure adequate reparation for the victim.”⁴³⁴

224. It should be recalled that the international responsibility of the State is based on acts or omissions of any of its powers or organs, irrespective of their rank, that violate the rights and obligations contained in the American Convention.⁴³⁵ The State's international responsibility can also be generated by the attribution to it of acts that violate human rights committed by third parties or private individuals when the State fails to comply, by act or omission of its agents who are in a position of guarantors, with its obligation to take the necessary measures to ensure the effective protection of human rights in inter-personal relations, contained in Articles 1(1) and 2 of the Convention.⁴³⁶ This entails assessing whether the State has adopted the prevention and protection measures that are necessary and effective when it is aware of a situation of real and immediate danger for a specific individual or group of individuals and the reasonable possibilities of preventing or avoiding that danger.⁴³⁷

225. However, the Court also recalls that it is not a criminal or a higher court,⁴³⁸ and that “it corresponds to the State's courts to examine the facts and the evidence submitted in the

⁴³⁰ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*, para. 172 and *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*, paras. 113 to 120. Also, see Colombian Constitutional Court, Judgment C-225 of May 18, 1995, para. 33: “In the Colombian case, also, the application of these rules by the parties in conflict is particularly urgent and important, because the armed conflict that the country is experiencing has severely affected the civilian population, as shown, for example, by the alarming data on the forced displacement of persons.” Similarly, the Guiding Principles on Internal Displacement developed by the Representative of the Secretary-General of the United Nations (cf. United Nations Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2 of 11 February 1998) may also be useful as a criterion for the hermeneutic interpretation of the content of the right to freedom of movement and residence established in Article 22 of the American Convention.

⁴³¹ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, para. 139, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 188.

⁴³² Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits*, para. 111, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 188.

⁴³³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 166, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 189.

⁴³⁴ *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 189.

⁴³⁵ Cf. *Case of Velásquez Rodríguez. Merits*, para. 164, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 188.

⁴³⁶ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*, para. 111, and *Case of the Pueblo Bello Massacre v. Colombia. Merits*, para. 113.

⁴³⁷ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits*, para. 123, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 78.

⁴³⁸ The Court is not a higher or appeal court to decide the disagreements between the parties concerning specific implications of the evidence or of the application of domestic law on aspects that are not directly related to compliance

individual cases.”⁴³⁹ The instant case does not relate to the innocence or guilt of the members of the Colombian Armed Forces who took part in the events, but to the conformity of the acts or omissions of the State agents with the American Convention. Consequently, with the exception of very specific matters in keeping with the purpose of this case and the exercise of its contentious function, the Court will determine whether the State is responsible for the alleged violations of the Convention, without analyzing the “probative errors” of the criminal judgment in first instance delivered by the Eighth Criminal Court of the Bogota Special Circuit against Rito Alejo del Río on August 23, 2012 (*supra* para. 179).

226. The Court will now examine the State’s responsibility for the alleged violations of Articles 4, 5 and 22 of the American Convention in the following order: (1) whether members of the Military Forces endangered the life and integrity and/or caused the forced displacement of the inhabitants of the communities of the Cacarica river basin owing to the bombing that took place during Operation Genesis, and (2) whether the State can be attributed with responsibility for the paramilitary incursions into the Cacarica river basin and the death of Marino López, which, in turn, allegedly resulted in the forced displacement of these communities.

B.1. Alleged violation of the right to life, personal integrity, and not to be forcibly displaced of members of the Cacarica communities owing to bombings during Operation Genesis

227. Regarding the events of this case and the bombings that took place during Operation Genesis, the Court notes that the evidence provided, and the arguments of the parties and the Commission reveal two versions of what happened.

228. On the one hand, the arguments of the Commission and of the representatives indicate that the Colombian Armed Forces bombed communities of the Cacarica River basin causing their forced displacement (*supra* para. 103). This version is supported by testimony of inhabitants of the region and of presumed victims⁴⁴⁰ as well as reports by international agencies,⁴⁴¹ or non-governmental organizations.⁴⁴² This version of the events is also the one developed by the Prosecutor General’s Office in the context of its investigation into Operation Cacarica.⁴⁴³ In

with international human rights obligations. Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 193.

⁴³⁹ *Case of Nogueira de Carvalho et al. v. Brazil*, para. 80, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 193.

⁴⁴⁰ Cf. Affidavits of January 21, 2013, prepared by Jhon Jairo Mena, Eleodro Sanchez Mosquera, Marco Fidel Velásquez and Ernestina Valencia Teheran (evidence file, folios 14982, 14983, 15011, 14950 and 15021) and the testimony of M.A.C.M. before the Prosecutor General’s Office, National Human Rights and International Humanitarian Law Unit, on December 11, 2002 (evidence file, folio 632).

⁴⁴¹ Cf. Report of the United Nations High Commissioner for Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN.4/1998/16, 9 March 1998, para. 103 (evidence file, folio 752). See also: United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1 (evidence file, folios 712, 713 and 715).

⁴⁴² Cf. Amnesty International. Colombia. Return to hope - forcibly displaced communities of Urabá and Medio Atrato region, June 2000 (evidence file, folio 1157); Secretariado Nacional de Pastoral Social, Bogota, “*Situación de Guerra and de Violencia en el Departamento del Chocó 1996-2002*,” November 2002, pp. 32, 40, 76 (evidence file, folio 8773).

⁴⁴³ Prosecutor General’s Office, document and Powerpoint presentation “Operation Cacarica” (evidence file, folios 19258 and 19263); Prosecutor General’s Office, Dossier on the Elmer Cárdenas Bloc, Report No. 260 of June 25, 2012 (evidence file, folio 45156); 14th Prosecutor, National Human Rights and International Humanitarian Law Unit, Indictment of December 26, 2008, in file 2332: “[...] since it is therefore appropriate to conclude that there was a common project between the self-defense forces and the Army, on the one hand, the ACCU, and its desire for political and territorial domination and, on the other, the Army and its desire to conquer the FARC subversive group [...]. In this region of Chocó department, especially in the area between the municipalities of Riosucio, Carmen de Darién and Murindó (Antioquia), where [...] at the time of the event, [...] the Elmer Cárdenas paramilitary front of the Self-Defense

addition, as the representatives and the Commission have observed, the intelligence report that preceded Operations Order 004, referred to eight objectives of Operation Genesis, which included Puente América (objective No. 6) and Teguerre (objective No. 5), which are two geographical places on the territory of the Cacarica Communities.⁴⁴⁴

229. On the other hand, the version presented by the State indicated that the Armed Forces did not bomb the Cacarica River basin and that they were not present in this geographical area, as some testimonies of inhabitants of the region affirm. The State also indicated that the operation was only executed with regard to seven of the eight objectives indicated (*supra* para. 106). This second version is based on the following probative elements: testimony of a member of the Armed Forces in the public hearing in the instant case,⁴⁴⁵ testimonies of other inhabitants of the area,⁴⁴⁶ reports on the results of operations,⁴⁴⁷ expert appraisal of Operational Rules of Colonel María Paulina Leguizamón Zárate and of Luis Emilio Cardozo

Forces were present, together with the 57th and 34th Fronts of the Revolutionary Forces of Colombia, the combined group that we will hereinafter call "Collusion between Self-Defense and Paramilitary Forces" and members of the Army's 15th and 17th Brigades, who maintained, either individually or in alliances, continuous confrontations with the known results [...]" (evidence file, folios 8862 and 8863); "[...] Conclusion II: The death of Marino Lopez Mena was not isolated; it formed part of a strategy of paramilitary consolidation, occupation of territory, and subjection of a common enemy (emphasized in the original) [...] inflicting terror in order to achieve the displacement of a non-combatant civilian population, possession of territory and, thus, achieving a point of the conflict that was positive for Castaño's objective and profitable for del Rio's interests [...]" (evidence file, folio 8873); [...] Conclusion III: One of the strategies included in the agreement between the Self-Defense Forces and the Army was simultaneous attacks: on the one hand, Operation Genesis by the Army and, on the other hand, the AC Elmer Cárdenas Group (perpetrators of the murder). The effect was felt throughout the territory to be taken over; we observe that the sound of the explosive devices launched during this action naturally had disastrous effects in Salaquí, but was also felt in a place called Bijao, so that it can be concluded that the effect was felt by all those located in these river valleys. Equally disastrous and generalized was the effect of the death of Marino, because it resulted in displacements throughout the territory; consequently, it merges into a single context, in other words, Operation Genesis and the action of the Elmer Cárdenas Bloc giving rise to a third group called "Collusion between Self-Defense and Paramilitary Forces," which carried out the joint task that, in addition, generated an immense terror, and resulted in the death of some individuals, such as Marino Lopez Mena, and sent others "mad," and led to the destruction of the context of their life [...]" (evidence file, folio 8875); "[...] The Operations took place simultaneously and the illegal group remained for at least 10 days, clearly proving the relationship between General Rito Alejo del Río and the paramilitary group to facilitate, through a third combined group, the common objectives mentioned above [...]. It has been proved that, in the sector or area of the Cacarica and Salaquí (adjoining), there was a simultaneous and joint operation formed, on the one hand, by the so-called Genesis (military) and, on the other, the death of Marino Lopez (self-defense forces), where aircraft (planes and helicopters) were used with the capacity to cross this reduced air space in instants, because the distance is 36.35 kilometers [...]. There were no confrontations between the troops and the self-defense forces; to the contrary, they met in a place called "Bocachica" and moved across the area of Operation Genesis together in helicopters of the State [...]" (evidence file, folios 8877 and 8878). Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, Decision on legal situation in case file No. 426 of July 31, 2001 (evidence file, folio 40373); Arguments of the Prosecutor General's Office cited by the Eighth Criminal Court of the Bogota Special Circuit in the judgment in proceedings under file No. 2009-063, of August 23, 2012 (evidence file, folio 44393).

⁴⁴⁴ Cf. Colombian Military Forces, National Army, 17th Brigade, Intelligence report attached to Operations Order No. 004 "Genesis" (evidence file, folios 5515 and 5516).

⁴⁴⁵ Cf. Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11, 2013.

⁴⁴⁶ Cf. Statements made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit by: J.E.V.R. on November 5, 2008, L.C.L. on September 7, 2005, Luis Aristarco Hinestrosa on April 13, 2007, José Bermudis on December 19, 2002, Margarita Vergara on November 11, 2002, and J.A.Q. on March 3, 2007 (evidence file, folios 16998, 17459, 17341, 619, 642 and 17229); Testimony of A.M.V. cited in the indictment decision of the 14th Prosecutor, National Human Rights and International Humanitarian Law Unit, in file 2332 (evidence file, folios 17537 and 17538); Affidavits of January 21, 2013, prepared by Jerónimo Pérez Argumedo, Alicia Mosquera Hurtado and Ángel Nelis Palacio (evidence file, folios 14923 and 14972) and Letter of the Peasant Communities displaced from Riosucio Chocó, to the Ministry of the Interior, Human Rights Administrative Unit, Directorate for Attention to those Displaced by the Violence, dated April 4, 1997 (evidence file, folio 607).

⁴⁴⁷ Cf. Colombian Military Forces, National Army, 17th Brigade, Operations Order No. 004 "Genesis" of February 1997 and Report of March 6, 1997 (evidence file, folios 5521 to 5524, 5528 to 5530).

Santamaría during the public hearing before this Court,⁴⁴⁸ and voluntary confessions of paramilitaries candidates under the Justice and Peace procedure.⁴⁴⁹ Also, regarding objective No. 5 of Operation Genesis (Teguerre), the State alleged, without the representatives or the Commission contesting this, that despite bearing the same names, objective No. 5 refers to a different place to the community called “Teguerre Medio,”⁴⁵⁰ which is more than 20 kilometers from the military objective.⁴⁵¹ In this regard, the representatives alleged that the coordinates provided by the State corresponding to objective No. 5 are within the territory of the Community Council of the Cacarica River basin included in the collective land title granted by Decree 841 of April 26, 1999, of the Colombian Agrarian Reform Institute (INCORA).⁴⁵²

230. The Court will now examine the hypothesis of the bombing carried out by the Colombian Armed Forces on the communities of the Cacarica River basin as the supposed cause of their forced displacement, assessing the evidence provided to the case file.

231. First, the first instance judgment of the Eighth Criminal Court of the Bogota Special Circuit (*supra* para. 179) does not refer to bombings in the Cacarica River basin even though it analyzed the presumed collaboration between members of the Colombian Armed Forces and paramilitary groups in the context of Operations Genesis and Cacarica. Second, with regard to the evidence from the Ombudsman’s Office, the Court notes that several documents refer to bombings that took place in the region of the Salaquí and Truandó river basin and that had been the main cause of the forced displacements of thousands of inhabitants of the region; however, it does not mention that there had been bombings in the Cacarica River basin.⁴⁵³

232. Third, the testimonial evidence of the inhabitants of the area indicating that the communities of the Cacarica river basin had been bombed is inconsistent and contradictory. For example, the Court notes that: (a) several deponents made no reference to bombings;⁴⁵⁴ (b)

⁴⁴⁸ Cf. Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15456), and Testimony of Luis Emilio Cardozo Santamaría, expert witness proposed by the State before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁴⁴⁹ Cf. Fredy Rendón Herrera. Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 28 and 29, 2010, and Statements of candidates of the extinct AC Elmer Cárdenas Bloc, regarding the so-called “Operation Cacarica (Genesis), of October 24, 2007, and March 13, 2009 (evidence file, video minutes 14:17 16:03, 12:07 and 9:49:28, folios 19174, 19194, 19229, 19230 and 19231); Luis Muentes Mendoza, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 28, 2010 (evidence file, video minute 16:06, folio 19175); William Soto Salcedo, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 29, 2010 (evidence file, video minute 10:24, folio 19183); Diego Luis Hinestroza Moreno, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 29, 2010 (evidence file, video minute 11:11, folio 19186); Alberto García Sevilla, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 29, 2010 (evidence file, video minute 11:20, folio 19189); Franklin Hernandez Seguro, Statements of candidates of the extinct AC Elmer Cárdenas Bloc regarding the so-called “Operation Cacarica (Genesis), of August 6, 2008 (evidence file, video minute 14:47, folio 19243).

⁴⁵⁰ Cf. Map of the region, Communities before the displacement (evidence file, folio 5389).

⁴⁵¹ Distance calculated by the Court based on the coordinates provided by the State and not contested by the representatives.

⁴⁵² Cf. Colombian Agrarian Reform Institute, Decree 841 of April 26, 1999 (evidence file, folio 47058).

⁴⁵³ Cf. Ombudsman’s Office, Decision of the Ombudsman No. 39: Human rights violation owing to the planting of African palm on the collective territories of Jiguamiandó and Curvaradó, Chocó, of June 2, 2005 (evidence file, folio 47460); Ombudsman’s Office, Complaint No. 9745030 addressed to the Ombudsman on March 1, 1997 (evidence file, folio 50734).

⁴⁵⁴ Cf. Statement made by Emedelia Palacios Palacios before the 21st Special Prosecutor, National Human Rights and International Humanitarian Law Unit on February 10, 2007 (evidence file, folio 8927); Statement made by H.J.G.B. before the Medellín Departmental Prosecutor, on February 24, 1998, file 426, volume 1, p. 192 (evidence file, folio 38984); Statement made by M.S. before the Medellín Departmental Prosecutor, on February 23, 1998, file 426, volume 1, pp. 187 to 190 (evidence file, folio 38980); Affidavits prepared by Henry Angulo Martinezy and Etibbia del Carmen

others indicated that bombing was heard in the area of the Salaquí River, Playa Bonita, Teguerre, Caño Seco or Tamboral;⁴⁵⁵ (c) others heard about the bombing indirectly through third parties;⁴⁵⁶ (d) some people indicated that they had seen planes and/or helicopters;⁴⁵⁷ (e) others stated that they had not seen planes,⁴⁵⁸ and (f) some inhabitants heard bombing near Puente América.⁴⁵⁹

233. Fourth, other statements by paramilitaries referred to bombing or machine-gunning from helicopters of the Colombian Armed Forces, in a place known as “La Loma” or “Loma de Cacarica,”⁴⁶⁰ while the paramilitaries were in the Los Katios National Park near Sautatá,⁴⁶¹ around 12 kilometers to the north of Puente América and about 10 kilometers from the place known as Loma de Cacarica.⁴⁶² Thus, as indicated by the State, the site of Loma de Cacarica is approximately two kilometers to the north of the place identified as objective No. 6 for Operation Genesis, Puente América.⁴⁶³ This is consistent with some testimonies provided by inhabitants of La Virginia,⁴⁶⁴ Puente América⁴⁶⁵ and El Limón,⁴⁶⁶ who stated that they had heard explosions and/or bombing at Loma de Cacarica. Furthermore, this version of the events coincides with the hypothesis of the Prosecutor General of what happened during Operation Genesis, according to which the Armed Forces had provided aerial support to the paramilitaries by bombing areas near Puente América.⁴⁶⁷

Paez, on January 21, 2013 (evidence file, folios 15070 to 15073 and 15042); Interview with C.M.P.M. by the Apartadó Judicial Police on April 15, 2010 (helpful evidence: Law 975(1), p. 115) (evidence file, folio 44561).

⁴⁵⁵ Cf. Statements made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, by J.E.V.R. on November 5, 2008, Luis Aristarco Hinestrosa on April 13, 2007 and Margarita Vergara on November 11, 2002 (evidence file, folios 16998, 17341 and 642); and Affidavits prepared by Alicia Mosquera Hurtado and Lucelis Bautista Pérez on January 21, 2013 (evidence file, folios 14972 and 15003).

⁴⁵⁶ Cf. Affidavit prepared by Jerónimo Perez Argumedo on January 21, 2013 (evidence file, folios 14923).

⁴⁵⁷ Cf. Affidavits of January 21, 2013 prepared by John Jairo Mena, Eleodro Sánchez Mosquera and Ángel Nelis Palacios (evidence file, folios 14982, 15011 and 14994).

⁴⁵⁸ Cf. Statements made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, by Luis Aristarco Hinestrosa on April 13, 2007, J.E.V.R. on November 5, 2008, and M.B.S. on December 11, 2002 (evidence file, folio 17341, 16998 and 641).

⁴⁵⁹ Cf. Statements made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, by M.A.C.M. and C.M.R. on December 11, 2002 (evidence file, folios 632 and 612) and Affidavit prepared by Marcos Fidel Velásquez on January 21, 2013 (evidence file, folio 14950).

⁴⁶⁰ Cf. Voluntary confessions made by William Soto Salcedo and Alberto García Sevilla, in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the 48th Delegate Prosecutor, Justice and Peace Unit, Medellín, April 29, 2010 (evidence file, folios 19177 and 19187).

⁴⁶¹ Cf. Statements made by William Soto Salcedo and Fredy Rendón, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 29, 2010 (evidence file, folio 19177 and 19192).

⁴⁶² Distance calculated by the Court based on the coordinates provided by the State and not contested by the representatives.

⁴⁶³ Distance calculated by the Court based on the coordinates provided by the State and not contested by the representatives. The State indicated, in particular, that there were several places in the region that were known as La Loma. One of them corresponded to military objective No. 2 near the Salaquí River, more than 30 milometers to the south of Puente América, and two others were places that were, respectively, 1.8 and 2.2 kilometers to the north of the Puente América objective.

⁴⁶⁴ Cf. Affidavits prepared by Jhon Jairo Mena and Eleodro Sanchez Mosquera on January 21, 2013 (evidence file, folios 14983 and 15011).

⁴⁶⁵ Cf. Testimony of M.A.C.M. before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on December 11, 2002 (evidence file, folio 632).

⁴⁶⁶ Cf. Affidavits prepared by Marco Fidel Velásquez and Ernestina Valencia Teheran on January 21, 2013 (evidence file, folios 14949 and 15021).

⁴⁶⁷ Cf. Prosecutor General's Office, document and Powerpoint presentation “Operation Cacarica” (evidence file, folios 19258 and 19263); 14th Special Prosecutor, National Human Rights and International Humanitarian Law Unit,

234. The State indicated that the inhabitants of Bijao, a community located around 30 kilometers to the north of Teguierre, the nearest Operation Genesis objective,⁴⁶⁸ could never have heard bombing so far away,⁴⁶⁹ because this was carried out near the Salaquí and Truando Rivers. However, the Court can infer, reasonably and consistently with the rest of the evidence, that the bombing heard by the inhabitants of both Bijao and the nearby villages (Puente América or El Limón) may have corresponded to the bombing that took place at Loma de Cacarica, located around 10 or 11 kilometers away.⁴⁷⁰

235. Also, according to the voluntary confessions of some paramilitaries during the special Justice and Peace procedure, no bombing was heard during the execution of Operation Cacarica.⁴⁷¹ Their statements even reveal that they were able to see the craters made by the explosions when they continued on towards the area of Salaquí, which coincides with several of the places indicated by the State as the objectives of Operation Genesis.⁴⁷²

Indictment in case file 2332: “[...] since it is therefore appropriate to conclude that there was a common project between the self-defense forces and the Army, on the one hand the ACCU, and its desire for political and territorial domination and, on the other, the Army and its desire to conquer the FARC subversive group [...]. In this region of Chocó department, especially in the area between the municipalities of Riosucio, Carmen de Darién and Murindó (Antioquia), where [...] at the time of the event, [...] the Elmer Cárdenas paramilitary front of the Self-Defense Forces were present, together with the 57th and 34th Fronts of the Revolutionary Forces of Colombia, the combined group that we will hereinafter call “Collusion between Self-Defense and Paramilitary Forces” and members of the Army’s 15th and 17th Brigades, who maintained, either individually or in alliances, continuous confrontations with the known results [...]” (evidence file, folios 8862 and 8863); “[...] Conclusion II: The death of Marino Lopez Mena was not isolated; it formed part of a strategy of paramilitary consolidation, occupation of territory, and subjection of a common enemy (emphasized in the original) [...] inflicting terror in order to achieve the displacement of a non-combattant civilian population, possession of territories and, thus, achieving a point of the conflict that was positive for Castaño’s objective and profitable for del Río’s interest [...]” (evidence file, folio 8873); “[...] Conclusion III: One of the strategies included in the agreement between the Self-Defense Forces and the Army was simultaneous attacks: on the one hand Operation Genesis by the Army, and on the other hand, the AC Elmer Cárdenas Group (perpetrators of the murder). The effect was felt throughout the territory to be taken over; we observe that the sound of the explosive devices launched during this action, naturally, had disastrous effects in Salaquí, but was also felt in a place called Bijao, so that it can be concluded that the effect was felt by all those located in these river valleys. Equally disastrous and generalized was the effect of the death of Marino, because it resulted in displacements throughout the territory; consequently, it merges into a single context, in other words, Operation Genesis and the action of the Elmer Cárdenas Bloc giving rise a third group called “Collusion between Self-Defense and Paramilitary Forces,” which carried out the joint task that, in addition, generated an immense terror, and caused the death of some, such as Marino Lopez Mena, and sent others “mad,” and led to the destruction of the context of their life [...]” (evidence file, folio 8875); “[...] The Operations took place simultaneously and the illegal group remained for at least 10 days, clearly proving the relationship between General Rito Alejo del Río and the paramilitary group to facilitate, through a third combined group, the common objectives mentioned above [...]. It has been proved that, in the sector or area of the Cacarica and Salaquí (adjoining), there was a simultaneous and joint operation formed, on the one hand, by the so-called Genesis (military) and, on the other, the death of Marino Lopez (self-defense forces), where aircraft (planes and helicopters) were used with capacity to cross this reduced air space in instants, because the distance is 36.35 kilometers [...]. There were no confrontations between the troops and the self-defense forces; to the contrary, they met in a place called “Bocachica” and moved across the area of Operation Genesis together in helicopters of the State [...]” (evidence file, folios 8877 and 8878).

⁴⁶⁸ Bearing in mind that the nearest object would be objective No. 6: Puente América; however, since the State denies that the Armed Forces attacked this objective, objective No. 5: Teguierre would be the nearest as the State has recognized.

⁴⁶⁹ Cf. Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15450 and 15451); Testimony of Luis Emilio Cardozo Santamaría, expert witness proposed by the Colombian State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁴⁷⁰ Distance calculated by the Court based on the coordinates provided by the State and not contested by the representatives.

⁴⁷¹ Cf. Voluntary confession made by Luis Muentes Mendoza in Report No. 116 of November 9, 2009, presented by the Technical Investigation Corps to the 122nd and 48th Regional Prosecutors delegated to the Justice and Peace judges (evidence file, folio 17165).

⁴⁷² Cf. Voluntary confessions made by William Soto Salcedo, Alberto García Sevilla and Fredy Rendón in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the 48th Delegate Prosecutor, Justice and Peace Unit, Medellín, on April 28 and 29, 2010: “on the way [from Boca Chica to Lomas de Salaquí] we realized that there had been bombing, because between Teguierre and Salaquí there were

236. Fifth, regarding the attacks that took place in Teguerre, the information provided by the State reveals that this objective did not correspond to the community of this name (Teguerre Medio), which is almost 25 kilometers away.⁴⁷³ Moreover, no arguments or evidence were presented indicating that a settlement or civilian property at objective No. 5 (Teguerre) was attacked. The representatives merely indicated that this objective was located, geographically, within the territory of the Community Council of the communities of the Cacarica river basin.

237. The foregoing allows the Court to reach several conclusions. On the one hand, there is insufficient evidence to prove that the bombing carried out by the Armed Forces directly affected the Communities of the Cacarica River basin, because it was directed at military objectives near the Salaquí River or the Truandó River. Nevertheless, diverse and congruent evidence exists indicating that a helicopter of the Colombian Air Force could have bombed or machine-gunned a site located at Loma de Cacarica, about two kilometers to the north of Puente América, objective No. 6 of Operation Genesis. On the other hand, it is unclear whether the inhabitants of the Cacarica river basin could have been able to hear the bombardments that occurred several kilometers to the south, on the banks of the Salaquí or Truandó Rivers. Despite this, these testimonies could be consistent with what really occurred near the Salaquí River, in particular if it is recalled that the southernmost Cacarica communities are located only a few kilometers from the site of the bombing attacks.⁴⁷⁴

238. Regarding the State's responsibility for alleged direct harm caused by the bombings, the Court indicates, based on the principle of distinction, that: (a) the bombing carried out by the Armed Forces took place several kilometers from the communities of the Cacarica River basin (because the 1.7 kilometers between Loma de Cacarica and Puente América is the minimum distance – in the context of the bombing during Operation Genesis – between a village or civilian property and the place where the attack may have taken place); (b) it has not been alleged or reported that the said bombings directly caused the death or injury of inhabitants of the communities of the Cacarica River basin; (c) it remains under discussion whether the Colombian Armed Forces really bombed or machine-gunned Loma de Cacarica located near Puente América, and (d) no evidence has been provided indicating the presence of civilians or civilian property in the place of the attack corresponding to objective No. 5: Teguerre.

239. Therefore, the Court considers that no evidence has been provided that would allow it to conclude that the objectives of the bombardments of Operation Genesis included civilian settlements or property. The fact that objective No. 5 (Teguerre) was located within the territory of the Community Council of the Cacarica River basin does not necessarily or automatically entail the violation of the principle of distinction, or that the State was prevented *per se* from conducting counterinsurgency operations on that territory, unless the attack on that objective would have involved a direct attack on civilian settlements or property, which, as indicated above, has not been proved.

240. Based on the above, and specifically with regard to the bombing carried out during the execution of Operation Genesis, the Court concludes that the State is not responsible for the

numerous craters caused by the bombs"; "we were advancing towards Loma de Salaquí, before arriving, we saw some large craters that the planes had left with the bombing" "[...] where there was a house or most of it, where they were holes, where they said that the bombing had taken place, on the way to Teguerre, we also saw some craters [...]" (evidence file, folios 19183, 19189 and 19204).

⁴⁷³ On this point, although the State acknowledged that this objective of Operation Genesis (Objective No. 5) had been attacked, it clarified, without this being contested by the representatives, that the said objective, even though its name was very similar to the community located in the Cacarica River basin (Teguerre Medio), referred to a different geographical site about 25 kilometers away. The distances were calculated by the Court based on the coordinates provided by the State and not contested by the representatives.

⁴⁷⁴ For example, the village of Teguerre Medio is located about 8 kilometers from objective 4A of Operation Genesis (Bocas del Guineo) and around 10 kilometers from objective 4 of Operation Genesis (Caño Seco). The distances were calculated by the Court based on the coordinates provided by the State and not contested by the representatives.

violation of the rights to life and to personal integrity, recognized in Articles 4 and 5 of the Convention.

B.2. Alleged responsibility of the State in the paramilitary incursions in the Cacarica river basin and, consequently, in the incursion that resulted in an alleged violation of the rights to life and to personal integrity of Marino López, which had presumably led to the forced displacement of members of the Cacarica communities, in alleged violation of the rights to personal integrity and not to be displaced

241. The undisputed facts are that: (a) Operation Genesis commenced on February 24, 1997, and during its execution at least seven of the eight objectives included in Operations Order 004 were attacked (*supra* para. 101); (b) paramilitaries of the “Chocó Group” were in Bijao and killed Marino López on February 27, 1997 (*supra* para. 108); (c) the paramilitaries ordered the inhabitants of Cacarica to abandon their possessions and to displace (*supra* para. 102); (d) over the period of time that coincides in part with the implementation of Operation Genesis, numerous inhabitants of the Cacarica river basin had to move to Turbo, Bocas de Atrato and Panama (*supra* para. 111), and (e) the commander of the 17th Brigade that participated in the events was convicted in first instance as having command responsibility for the murder of Marino López (*supra* para. 179).

242. Regarding the planning and implementation of the so-called “Operation Cacarica,” as well as the presumed responsibility of the State for the death of Marino López, the Court reiterates that there were two versions of what happened, revealed by both the evidence in the case file and the arguments of the parties and of the Commission (*supra* paras. 103 to 106).

243. On the one hand, the version presented by the representatives and the Commission indicates that, simultaneously and in coordination with Operation Genesis, the ACCU paramilitary groups, executing the so-called “Operation Cacarica,” advanced from north to south from the Los Katios National Park along the Cacarica River, passing through Bijao and other communities located on the banks of this river, to finally arrived on the banks of the Salaquí and Truandó Rivers, where they allegedly executed joint operations with the Army. Similarly, some of the evidence in the case file would appear to indicate that the execution of Operation Genesis was simultaneous and coordinated with the actions of the paramilitaries (*supra* para. 104).

244. On the other hand, the State's version maintains that not only the Armed Forces did not bomb the Cacarica River basin, but neither were they present in this geographical area, and that the FARC guerrilla was responsible for the forced displacement that took place at that time. According to this version, there was neither collaboration, support nor coordination with the paramilitary groups and the attacks conducted by the Colombian Armed Forces were only directed against the seven aforementioned objectives (*supra* para. 106).

245. The evidence that supports the first version of the events is as follows: (a) testimonial evidence of inhabitants of the area;⁴⁷⁵ (b) voluntary confessions of paramilitaries demobilized under the special Justice and Peace procedure;⁴⁷⁶ (c) statements of some members or former members of the Armed Forces;⁴⁷⁷ (d) investigations, reports and conclusions of the Prosecutor

⁴⁷⁵ Cf. Affidavits prepared by Jhon Jairo Mena, Eleodro Sanchez Mosquera, Marco Fidel Velásquez and Ernestina Valencia Teheran on January 21, 2013 (evidence file, folios 14982, 14983, 15011, 15012, 14949, 14950, 15021 to 150274); and Testimony of M.A.C.M. before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on December 11, 2002 (evidence file, folio 632).

⁴⁷⁶ Cf. Statements made by William Soto Salcedo and Alberto García Sevilla, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the 48th Delegate Prosecutor, Justice and Peace Unit, Medellín, April 29, 2010 (evidence file, folio 19177 to 19179, 19188 and 19189).

⁴⁷⁷ Cf. Statements made by Colonel C.A.V.R. before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on May 8, 1998, and before the Prosecutor delegated to the Supreme Court of

General's Office;⁴⁷⁸ (e) considerations of the Eighth Criminal Court of the Bogota Special Circuit in the judgment convicting Rito Alejo del Río Rojas;⁴⁷⁹ (f) reports of the Colombian Ombudsman's Office,⁴⁸⁰ and (g) reports prepared by international agencies⁴⁸¹ and non-governmental organizations.⁴⁸²

246. Meanwhile, the second version of the events is based on the following probative elements: (a) testimony of members of the Armed Forces;⁴⁸³ (b) some voluntary confessions of paramilitaries demobilized under the special Justice and Peace procedure;⁴⁸⁴ (c) voluntary confessions of guerrillas demobilized under the special Justice and Peace procedure;⁴⁸⁵ (d) operations reports of the Armed Forces; (e) testimony of some inhabitants of the area,⁴⁸⁶ and (f) expert opinions, provided in writing or orally during the public hearing in this case.⁴⁸⁷

247. In order to decide whether or not the State is internationally responsible for the paramilitary incursions in the communities of the Cacarica, the Court will proceed to analyze whether, as indicated by the representatives and the Commission, in Colombia and/or in the

Justice on September 11 and 13, 2002 in proceeding No. 5767-5 (evidence file, folios 38794 to 38797, 41284, 41335 and 41336).

⁴⁷⁸ Cf. Prosecutor General's Office, document and Powerpoint presentation "Operation Cacarica" (evidence file, folios 19258 and 19263), The Prosecutor General's Office, Dossier on the Elmer Cárdenas Bloc, Report No. 260 of June 25, 2012 (evidence file, folio 45156), 14th Special Prosecutor, National Human Rights and International Humanitarian Law Unit, Indictment in file 2332 (evidence file, folio 8875).

⁴⁷⁹ Cf. Judgment in proceedings No. 2009-063, of the Eighth Criminal Court of the Bogota Special Circuit, August 28, 2012, convicting Rito Alejo del Río Rojas (evidence file, folios 44401 and 44402).

⁴⁸⁰ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 231)

⁴⁸¹ Cf. Report by the United Nations High Commissioner on Human Rights on the Office in Colombia to the fifty-fourth session of the Commission on Human Rights. E/CN.4/1998/16, of 9 March 1998, para. 103 (evidence file, folio 752). See also: United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1 (evidence file, folios 712, 713 and 715).

⁴⁸² Cf. Amnesty International. Colombia Return to hope - forcibly displaced communities of Urabá and Medio Atrato region, June 2000 (evidence file, folio 1157); Secretariado Nacional de Pastoral Social Bogota, "*Situación de Guerra and de Violencia en el Departamento del Chocó 1996-2002*," November 2002, pp. 32, 40 and 76 (evidence file, folios 8773, 8777 and 8795).

⁴⁸³ Cf. Statements of: Colonel A.N.R. on December 27, 2001, Colonel E.L.F.C. on August 30, 2002, M.J.P.P. on September 2, 2002, Colonel M.E.P.G. on September 2, 2002, Lieutenant Colonel P.A.A. on September 4, 2002, Lieutenant Colonel F.C.O. on September 4, 2002, Lieutenant Colonel F.C.O. on September 5, 2002, Lieutenant Colonel F.L.C. on September 9, 2002, and Lieutenant Colonel L.R.G.R. on September 9, 2002, C.O. pp 4, 6, 7, 89, 91, 92, 100, 101, 104, 105, 123, 124, 127, 140, 143 and 153 (evidence file, folios 41131, 41133, 41134, 41216, 41218, 41219, 41227, 41228, 41231, 41232, 41250, 41251, 41254, 41267, 41270 and 41275).

⁴⁸⁴ Cf. Voluntary confessions of Fredy Rendón Herrera on October 24, 2007, Diego Luis Hinestroza Moreno on April 29, 2010, Alberto García Sevilla on April 29, 2010, and Franklin Hernandez Seguro on August 6, 2008, in Statements of candidates of the extinct AC Elmer Cárdenas Bloc, regarding the so-called "Operation Cacarica (Genesis) made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit (evidence file, folios 18373, 18210, 19187 to 19189 and 19243).

⁴⁸⁵ Cf. Interventions of Elda Neyis Mosquera Garcia (alias "Karina"), Danis Daniel Sierra Martínez (alias "Samir"), Nicolas Montoya Atehortua (alias "Elkin"), Marcos Fidel Giraldo Torres (alias "Isaías" or "Garganta") on January 29 and February 5, 2013, in Report No. 015 of February 6, 2012, of the Technical Investigation Corps addressed to the 44th Prosecutor delegated to the National Unity Court for Justice and Peace (evidence file, folios 16460 and ff.).

⁴⁸⁶ Cf. Statements made before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, by J.E.V.R. on November 5, 2007, Luis Aristarco Hinestroza on April 13, 2007, J.A.Q. on March 3, 2007, J.B.V.P. on December 19, 2002, and Margarita Vergara Serrana on December 11 (evidence file, folios 16997, 16998, 17341, 17229, 620, 641 and 642).

⁴⁸⁷ Cf. Statements made by Colonels Germán Castro and Luis Emilio Cardozo Santamaría, witness and expert witness, respectively, proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 11 and 12, 2013, and Affidavit dated January 31, 2013, prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folios 15445 to 15449).

region of the Urabá Chocóano there was a context of omission, collaboration or coordination between paramilitary groups and members of the Armed Forces. Then, the Court will review both the context and the pertinent evidence in order to decide which hypothesis is the most apt, appropriate, reasonable and pertinent for the Court to determine the State's responsibility in the events and the alleged violations committed during the paramilitary incursions.

B.2.1. The context of omission, collaboration or coordination between paramilitary groups and the Armed Forces

248. In several of this Court's judgment, it has been possible to verify the existence of connections between members of the Colombian Armed Forces and paramilitary groups at different times and in different geographical contexts. As established in those cases, this connection consisted in: (a) specific acts of collaboration, support or coordination,⁴⁸⁸ or (b) omissions that allowed or facilitated the perpetration of serious crimes by non-State agents.⁴⁸⁹

249. On the one hand, it is a well-known public fact that various decisions of Colombia's high courts have referred to the connections existing between paramilitary groups and members of the Armed Forces,⁴⁹⁰ as have several reports of the Ombudsman's Office.⁴⁹¹ This Court's case law also reveals that, on other occasions, it has taken into account reports and decisions of the Public Prosecution Service in which the collaboration between members of the Army and paramilitary groups in the department of Antioquía was considered proved.⁴⁹² Furthermore, the reports published by the national Historical Memory Center cited by Miguel Samper, the deponent for information purposes offered by the State,⁴⁹³ as well as by expert witness Javier

⁴⁸⁸ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*, para. 123; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs* paras. 82, 93 and 101(a); *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs* paras. 125.57, 125.86 and 132, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, paras. 114 and 124.

⁴⁸⁹ Cf. *Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109 para. 86(c); *Case of the Pueblo Bello Massacre Colombia. Merits*, paras. 126 and 140; *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*, para. 92.

⁴⁹⁰ Cf. Colombian Supreme Court of Justice, Criminal Cassation Chamber: Review Judgment No. 30516, March 11, 2009 (evidence file, folios 9851 and 9856); Cassation Judgment No. 24448, September 12, 2007, cited in Regional Director of Prosecution Offices, Memorandum No. 0035 of April 28, 2009, pp. 106 to 118 (evidence file, folio 10024). See also Colombian Constitutional Court, decision 005 of January 26, 2009, and Council of State, Third Section, Action for direct reparation, Judgment No. 68001-23-15-000-1996-01698-01, Counselor Rapporteur: Olga Melida Valle de La Oza of February 27, 2013, p 13.

⁴⁹¹ Cf. Ombudsman's Office, Fourth Report to the Colombian Congress, Santafé de Bogotá, 1997, pp. 59 and 60, cited by the Commission on Human Rights of the United Nations in the Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1, of 11 January 2000. para. 25 (evidence file, folio 1571). It should be noted that the President of this Court, through its Secretariat, requested the Colombian Ombudsman's Office to transmit the Fourth Report of the Ombudsman's Office to the Colombian Congress as helpful evidence; however, it was not sent. Nevertheless, the State did not contest the reference made to the said report in the United Nations report, so that the Court considers that the reference to its text relates to its literal meaning. See also, Ombudsman's Office, Twelfth Report of the Ombudsman to the Colombian Congress, January-December 2004, pp. 66, 67, 172 and 173; Ombudsman's Office. Ombudsman's Report on the forced displacement owing to the violence in Colombia, of April 2002, points 4 and 9; and Ombudsman's Office. Report on monitoring compliance with Judgment T-1025 of 2007, pp. 16, 17, 21, 35 and 35.

⁴⁹² Public Prosecution Service, Human Rights Office, Ruling issued by the Human Rights Office on September 30, 2002. Ruling cited in the *Case of the Ituango Massacres v. Colombia*. para. 125.100: "on September 30, 2002, the disciplinary office delegated to the defense of human rights decided to sanction Lieutenant Everardo Bolaños Galindo and Sergeant first class Germán Antonio Alzate Cardona, alias "Rambo," removing them from their positions as public officials because it found them responsible for having intentionally collaborated with and facilitated the paramilitary incursion in El Aro and the removal of livestock. On November 1, 2002, following an appeal filed by these two individuals, this ruling was confirmed in second instance by the Disciplinary Chamber of the Public Prosecution Service."

⁴⁹³ Cf. Testimony of Miguel Samper, deponent for information purposes proposed by the State, before the Inter-American Court of Human Rights, during the public hearing on February 12, 2013: "[...] by a very substantial institutional reform that resulted in the creation of a Historical Memory Center responsible for contributing to and also promoting the construction by civil society of this historical memory on the legacy of gross and evident human rights

Ciurlizza,⁴⁹⁴ also contain accounts of different scenarios in which there were connections between the Colombian Armed Forces and the paramilitary groups.⁴⁹⁵

250. In addition, the evidence gathered in the investigations of the Prosecutor General's Office (based on statements by Fredy Rendón and on the paramilitary groups that were active in other parts of the Urabá described by him) stressed the short distances between centers of operation of some of the paramilitary groups and the location of Armed Forces command posts, as an indicator or indication of the collaboration or acquiescence of the Armed Forces with the former. Thus, for example, in 1995, in Necoclí (Urabá Antioqueño), Operations Base 1 of the "Guelengues" group was 50 meters from the Police Command Post of that town and 500 meters from the military base located "in the public works camp situated on the way out of the municipal capital of Necoclí towards Turbo."⁴⁹⁶ The same document of the Prosecutor General's Office mentions that, according to this paramilitary leader: (a) the "relations with the soldiers" were "extremely good" (referring to six soldiers of different ranks with whom "coordination was carried out"); (b) in August 1996, the paramilitary groups that were operating in Unguía and Acandí (Urabá Chocóano), were operating in coordination with the Army; (c) the paramilitary group that he situated in Riosucio from December 21, 1996, to February 15, 1997, had "permanent and excellent relations with the Commander of the Police Station of the Municipality of Río Sucio,"⁴⁹⁷ and (d) the existence of coordination with authorities and the Armed Forces in the Operation to enter Vigía del Fuerte on May 22, 1997.⁴⁹⁸

251. In accordance with what has been indicated by several State institutions, different United Nations bodies and agencies (the Commission on Human Rights, the Office of the High Commissioner for Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights,⁴⁹⁹ and the ILO⁵⁰⁰) have referred to this context of connections between

violations or breaches of international humanitarian law [...]; "[...] the Historical Memory Center is responsible for promoting and obtaining measures of satisfaction [...]."

⁴⁹⁴ Cf. Testimony of Javier Ernesto Ciurlizza Contreras, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013: " [...] I refer to those reports prepared by the Historical Memory Center or what was previously called the Historical Memory Group of the National Reparation and Conciliation Commission indicating that, indeed, the paramilitary phenomenon was associated with private individuals, at least at the local level [...]."

⁴⁹⁵ Cf. National Historical Memory Center, "*¡Basta ya! Colombia: Memorias de guerra y dignidad. Informe General Grupo de Memoria Histórica*," Imprenta Nacional, Colombia, 2013, pp. 20, 42, 48, 343 and 347; and "*Justicia y Paz ¿verdad judicial o verdad histórica?*" Colombia, 2012, pp. 251, 377, 469, 498, 513, 514 and 515; "*La Rochela: Memorias de un crimen contra la justicia*", Ed. Semana, Colombia, 2010, pp. 20, 95, 96, 104, 105 and 116; "*Silenciar en Democracia. Las masacres de Remedios y Segovia, 1982-1997*," Ed. Semana, Colombia, 2010, pp. 21, 22, 28, 29, 61, and 73 to 76; "*La masacre de Bahía Portete: Mujeres Wayuu en la mira*", Ed. Semana, Colombia, 2010, pp. 23 and 33; "*San Carlos: Memorias del éxodo en la guerra*", Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 87 and 15; "*Mujeres y guerra. Víctimas y resistentes en el Caribe colombiano*", Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 31, 32 and 240.

⁴⁹⁶ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón (evidence file, folio 45254).

⁴⁹⁷ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón (evidence file, folios, 45257, 45282 and 45289).

⁴⁹⁸ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón (evidence file, folios 45257, 45282, 45289 and 45312). The document indicates, in particular, that the paramilitaries were accompanied by "3 piranha boats and a small Navy vessel" and that the Mayors of Vigía and of Bojaya participated and collaborated at that time, as well as the Police of Vigía and of Bojaya.

⁴⁹⁹ Cf. United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1, para. 25 (evidence file, folio 1571). United Nations High Commissioner for Human Rights, Reports on the Situation of Human Rights in Colombia: E/CN.4/2001/15, 20 March 2001, para. 131 (evidence file, folio 2601); E/CN.4/2005/10, 28 February 2005, para. 149, Annex No. II, paras. 5, 6, 7 and 8 (evidence file, folios 2337 and 2348); E/CN.4/2004/13, 17 February 2004, paras. 23, 24, 65 and 73 (evidence file, folios 2382, 2383, 2392, and 2393); E/CN.4/2003/13, 24 February 2003, paras. 9, 34, 44, 74, 75 and 77 (evidence file, folios 2445, 2450, 2452, 24659 and 2460); E/CN.4/2002/17, 28 February 2002, para. 62 (evidence file, folio 2520); E/CN.4/2000/11, 9 March 2000, paras. 25, 110 and 111 (evidence file, folios 2640, 2657 and 2658); E/CN.4/1998/16, 9 March 1998, paras. 29, 90, 91 and 175

the Armed Forces and the paramilitaries. Lastly, some expert opinions presented in these proceedings,⁵⁰¹ and in other proceedings before the Court⁵⁰² (incorporated into the documentary evidence of this case) reveal these connections.

252. The Fourth Report of the Ombudsman's Office to the Colombian Congress in 1997 is illustrative in this regard. It indicated that the paramilitary groups had "become the illegal arm of the Armed Forces and the Police, for whom they carried out the dirty work that the Armed Forces and Police cannot do as authorities subject to the rule of law." Thus, according to the Ombudsman, the paramilitary activities represented "a new form of exercising illegal repression with no strings attached."⁵⁰³

253. In addition, the case file contains evidence that specifically indicates that the Army's 17th Brigade, which operated in the region of the Cacarica river valley and surrounding areas, had been accused in several cases of having connections with paramilitary groups.⁵⁰⁴ During the proceedings before this Court, evidence was presented indicating that senior Army commanders could have had connections with paramilitary groups in the Urabá region and in other regions. This is supported by: (a) testimony and denunciations of soldiers and of former members of the Armed Forces;⁵⁰⁵ (b) information from the Prosecutor General's Office;⁵⁰⁶ (c) confessions and statement of demobilized paramilitaries,⁵⁰⁷ and (d) an expert opinion presented in the hearing in the instant case.⁵⁰⁸

(evidence file, folios 744, 751 and 762). See also, United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of 5 May 1997, para. 17; 4 August 2010, para. 8, and 26 May 2004, para. 12.

⁵⁰⁰ Cf. ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR), individual observation, 2009, pp. 78 and 79.

⁵⁰¹ Cf. Expert opinion provided by Javier Ciurlizza, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013: "[...] The existence of connections between paramilitary groups and some local economic or political agents is public knowledge [...]." Anthropological appraisal provided by Jesús A. Flores López, proposed by the representatives, before the Inter-American Court of Human Rights on February 12, 2013.

⁵⁰² Cf. Sworn statement by Federico Andreu Guzmán. Case of the Mapiripán Massacre and the La Rochela Massacre v. Colombia. In different parts of his statement, Mr. Andreu referred to the existence of connections between paramilitary groups and soldiers.

⁵⁰³ Cf. Ombudsman's Office, Fourth Report to the Colombian Congress, Santafé de Bogotá, 1997, pp. 59 and 60, cited by the United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1, para. 25 (evidence file, folio 1571).

⁵⁰⁴ Cf. Statements by G.I.C.M., Mayoress of Apartadó, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on October 21, 1998, and April 24, 1997 (evidence file, folios 39585 and 38813); Statements made by Colonel C.A.V.R., before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on May 8, 1998, September 11 and 13, 2002 (evidence file, folios 38794, 34795, 38796, 41284 and 41335); Statement made by M.M.C. in proceeding 426, and before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on July 28, 1999 (evidence file, folios 39613 and 39614). Regarding this testimony, it should be explained that the Prosecutor considered it impossible that a person who had just entered the Army had obtained the trust of the senior military commanders, as in the case of M.M.C. Regarding the episode when he had apparently heard Rito Alejo talk in English, no evidence was offered to prove his knowledge of that language. The testimony is suspected of being false because it does not explain how the author knows the exact location of paramilitary bases, the weapons they had, and the exact numbers of the vehicle license plates used by paramilitary leaders (evidence file, folios 41564 to 41566).

⁵⁰⁵ Cf. Testimony of C.A.V.R. of May 8, 1998, September 11 and 13, 2002, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit (and testimony of C.A.F. of May 11, 201, before the Eighth Criminal Court of the Bogotá Special Circuit (evidence file, video, minute 29:10 etc., folio 8745).

⁵⁰⁶ Cf. Prosecutor General's Office, Document and Powerpoint presentation "Operation Cacarica" (evidence file, folios 19258 and 1926), and Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón (evidence file, folio 45295).

⁵⁰⁷ Cf. Voluntary confessions of Fredy Rendón Herrera and Julio César Arce Graciano, in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the 48th

254. Lastly, it is worth repeating that the Eighth Criminal Court of the Bogota Special Circuit reached similar conclusions in its judgment of August 23, 2012, in which Rito Alejo del Río Rojas was convicted for the murder of Marino López, referring to the context of acquiescence between the Armed Forces and the paramilitaries in the region. In particular, that court indicated that it was “sufficiently documented in the case file that, in other regions near the Urabá Chocóano, the phenomenon of collusion between the soldiers and the self-defense forces was also present, which supports the fact that this same situation was present in Chocó.”⁵⁰⁹

B.2.2. The paramilitary incursions and the State's responsibility

255. With regard to the paramilitary incursions in the Cacarica communities, although the State described a scenario in which the FARC guerrilla were responsible for the forced displacements that occurred on these dates (*supra* para. 115), it did not contest the presence of the paramilitaries in Bijao on February 26, 1997, or that they had perpetrated the murder of Marino López (*supra* para. 108). The State also affirmed that several combats between the FARC and the paramilitaries had taken place in different parts of the Cacarica river basin since before Operation Genesis.⁵¹⁰ This was also asserted in a paramilitary's voluntary confession.⁵¹¹ Furthermore, the testimony of several inhabitants indicated that they had seen paramilitaries in other parts of the Cacarica river basin.⁵¹²

256. Likewise, the voluntary confessions of demobilized paramilitaries indicate that they had entered the Cacarica river basin passing through the following communities: Bijao, Bocas de Limón, La Virginia and San Higinio, until they reached the banks of the Salaquí River.⁵¹³

Delegate Prosecutor, Justice and Peace Unit, Medellín, on April 28, 2010 (evidence file, minutes 11:08 and 14:24, folios 19160 and 19162).

⁵⁰⁸ Cf. Affidavit prepared by Gimena Sánchez-Garzoli, expert witness proposed by the representatives of the presumed victims, on January 30, 2013 (evidence file, folio 15242).

⁵⁰⁹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

⁵¹⁰ In its final written arguments, the State indicated that: “In 1996, confrontations, recruitment by the illegal armed groups, and the control of fuel in the region by these same illegal groups intensified” (merits file, folio 1535). It also indicated that: “In October 1996, illegal self-defense groups raided the village of Brisas de Curbaradó, murdering five people from the region. Thereafter open conflict erupted between the illegal self-defense groups and the FARC in the region of Bajo Atrato, an area that covers from the mouth of the Atrato to the Curbaradó (the Medio Atrato goes from there to Bojayá and the Alto Atrato from Bojayá to Quibdó, capital of the department of Chocó). The basins of the Cacarica, Salaquí and Truandó Rivers are situated in Bajo Atrato and the municipality of Riosucio is located in this region, with the municipal capital situated where the Salaquí River meets the Atrato. The two illegal organizations increased their terrorist activities to obtain control of the territory, as well as control of drug-trafficking in the region. They raided villages located on the banks of the rivers that run through the municipality of Riosucio; they perpetrated massacres and murdered inhabitants who refused to collaborate with the illegal armed group, who collaborated with the enemy group, or who had been accused of belonging to it. These illegal armed groups used extortion against the commercial sector and businessmen of the region and fought against the Armed Forces. These factors led to the displacement of peasant communities to the municipal capitals (merits file, folio 1536).

⁵¹¹ Cf. Statement made by Fredy Rendón, in proceedings Nos. 1042 and 3856 before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, November 7, 2007 (evidence file, folio 17363 and 17364).

⁵¹² Cf. Interview with E.M.Q., resident of Perancho (Cacarica), by the Technical Investigation Corps on May 11, 2010 (evidence file, folios 44674 and 44675); Statement and interview with Cruz Manuel Ramírez, resident of Cacarica, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit and the Technical Investigation Corps on December 11, 2002, and May 3, 2010, respectively (evidence file, folios 611, 612 and 44818). Testimony of J.B.V.P., before the Special Commission of the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on December 19, 2002 (evidence file, folio evidence file, folio 619).

⁵¹³ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón in relation to ‘Operation Cacarica from February 23, 1997, to March 5, 1997’ (evidence file, folio 45293); Statement made by Luis Muentes Mendoza, before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit in proceeding No. 2332, on August 29, 2008 (evidence file, folios 17390 and 17391); Voluntary confessions of Alberto García Sevilla and William Soto Salcedo, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the 48th Delegate

Furthermore, based on these statements and subsequent investigations, the Prosecutor General's Office indicated that two paramilitary groups, proceeding from Cutí and Turbo, had met up in Sautatá and had entered several communities of the Cacarica River basin, where they had engaged in confrontations with FARC guerrillas, before reaching the banks of the Salaquí River.⁵¹⁴ The Eighth Criminal Court of the Bogota Special Circuit took into consideration this version of the events.⁵¹⁵

257. A first conclusion that can reasonably be reached, based on the evidence in the case file, is that paramilitary groups, specifically the "Chocó Bloc" and the "Pedro Ponte" group, entered different communities of the Cacarica River basin, beginning in the Los Katios National Park, passing near La Loma de Cacarica and continuing through Bijao, Bocas de Limón, La Virginia and San Higinio, until they reached the banks of the Salaquí River; these incursions were known as "Operation Cacarica" (*supra* para. 104). The State did not present any evidence that would allow different conclusions to be reached

258. Second, different testimonies indicate that, during "Operation Cacarica," in addition to perpetrating the death of Marino López, the paramilitaries threatened several inhabitants of these communities and caused damage and destruction of their homes and possessions (*supra* para. 102). The Prosecutor General's Office and the Eighth Criminal Court of the Bogota Special Circuit⁵¹⁶ also described these circumstances. For its part, the State merely acknowledged that the paramilitaries were responsible for the death of Marino López and did not dispute the other acts that they had perpetrated against the inhabitants of the Cacarica river basin.

259. Third, the Court notes that a series of probative elements indicate that when the paramilitaries were executing "Operation Cacarica," they reached the locality of Teguerre where they met up with the Armed Forces and carried out joint operations in relation to military objectives established in Operations Order 004. In particular, they had taken part in attacks on: Teguerre (Objective No. 5); Tamboral (Objective No. 1); Caño Seco and Bocas de Guineo (Objective No. 4), and La Loma de Salaquí (Objective No. 2). This hypothesis is based on the following evidence: (a) conclusions of the Eighth Criminal Court of the Bogota Special Circuit;⁵¹⁷ (b) documents presented by the Prosecutor General's Office in which it took into account the statements of some paramilitaries and their subsequent verification;⁵¹⁸ (c) testimony of inhabitants who had observed paramilitaries carrying out operations together with members of the Armed Forces,⁵¹⁹ and (d) voluntary confessions of demobilized paramilitaries.⁵²⁰

Prosecutor, Justice and Peace Unit, Medellín, on April 29 and 30, 2010 (evidence file, folios 19222 and 19184, minutes 15:11 and 10:51).

⁵¹⁴ Cf. Prosecutor General's Office, document and Powerpoint presentation "Operation Cacarica" (evidence file, folios 19257 and 19263).

⁵¹⁵ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

⁵¹⁶ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14803).

⁵¹⁷ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14808).

⁵¹⁸ Cf. Prosecutor General's Office, document and Powerpoint presentation "Operation Cacarica" (evidence file, folios 19255 to 19258). Also, Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc, Structures described by Fredy Rendón and Report No. 260 of June 25, 2012 (evidence file, folios 45293 and 45156).

⁵¹⁹ Cf. Affidavit prepared by Jerónimo Pérez Argumedo on January 21, 2013 (evidence file, folios 14923 to 14925).

⁵²⁰ Cf. Voluntary confession of Fredy Rendón Herrera, in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, on April 30, 2010; Alberto García Sevilla, before the Prosecutor General's Office Justice and Peace Unit on October 28, 2008, and C.A.F. Alvarez in Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica on May 8, 2008 (evidence file, folios 19220, 19253 and 18396); Voluntary confession of Edwin Alberto Romero Cano on March 24, 2011, in Prosecutor General's Office, DVD "Subclips candidates 2. Operation Genesis. Voluntary confessions" (evidence file, video minutes 00:45 and 03:18, folio 44537); Voluntary confession and statement of William Manuel Soto Salcedo,

260. Meanwhile, as indicated, the State disputed this information and indicated that: (a) only regular troops took part in Operation Genesis; (b) it is not the State's policy to operate with the illegal self-defense groups; (c) there is no systematic pattern or practice of collusion with the self-defense groups; (d) the State was not responsible for the displacement, nor was its Operation Genesis, rather it was the FARC; (e) it did not accept the expression "joint operations" to refer to supposed actions executed by members of the Army and members of the illegal armed groups, and (f) it is contradictory to affirm that the State failed to adopt measures to protect the community when, at the same time, it is acknowledged that the Armed Forces were in the region carrying out operations.

261. The State added that the reports of March 1997, following the first stages of Operation Genesis do not refer to joint missions with paramilitary groups, neither do some of the voluntary confessions of paramilitaries.⁵²¹ The State also indicated that several of the paramilitaries who testified in this regard, also presented previous or subsequent versions indicating the opposite, and much of the evidence presented by the Commission and the representatives to support the hypothesis of the joint operations is based on this other version. Consequently, it concluded that the validity of these statements taken as a whole is an immense problem for the State, and also for the courts (*supra* para. 70).

262. In addition, the representatives and the Commission indicated that, in addition to carrying out joint operations, the State had collaborated in other stages of Operation Cacarica: namely, by bombing the sector of Loma de Cacarica (*supra* para. 103).

263. As indicated by the deponent for information purposes, Miguel Samper (*supra* para. 75), according to Colombian law and the case law of the Supreme Court of Justice (*supra* para. 74), the voluntary confessions, including those that may be considered contradictory or inconsistent and/or that were made by the same candidate, were verified and confirmed by the investigative organs in the context of the Justice and Peace procedure; in this case, the Justice and Peace Unit of the Prosecutor General's Office. Therefore, the version of the facts that the said organ was finally able to confirm, after comparing the versions, is the one that appears in the position of the Prosecutor General, both before the Colombian jurisdictional organs (*supra* para. 76), and in the preparation of its documents on the "Elmer Cárdenas Bloc" or on "Operation Cacarica"⁵²² (for example in the "dossier" in this regard). In addition, as recorded in the evidence forwarded to this Court, in the instant case, the Prosecutor General's Office undertook and continues to undertake the tasks of assessment, investigation and verification of what was affirmed in the voluntary confessions by the demobilized paramilitaries who became candidates for the benefits of the Justice and Peace Law.⁵²³ In the case of the contradictory versions, the Court has already indicated in the chapter on evidence that it must take into account the agreement with other probative elements and the context to determine which version is most congruent with the rest of the evidence presented (*supra* paras. 78 and 79).

in Statements of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, on April 29, 2010, and before the Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, on December 5, 2011 (evidence file, folios 17896 and 17702); and Testimony of Luis Alirio Córdoba López, cited in the indictment in the proceeding against Rito Alejo del Río of December 26, 2008 (evidence file, folio 17541).

⁵²¹ Cf. The Court notes, in particular, that the following voluntary confessions support this hypothesis: Statements of the candidates of the extinct AC Elmer Cárdenas Bloc concerning the so-called "Operation Cacarica (Genesis)", of October 24, 2007 (minutes 11:40 and 12:07) (evidence file, folios 19229 and 19230); William Soto Salcedo and Franklin Hernandez Seguro, Statements of the candidates of the extinct AC Elmer Cárdenas Bloc concerning the so-called "Operation Cacarica (Genesis)", of August 6, 2008 (minute 14:47) (evidence file, folio 19243).

⁵²² Cf. Prosecutor General's Office, Document, Powerpoint presentation, and Organizational structure "Operation Cacarica" (evidence file, folios 19257, 19263 and 45234) and Prosecutor General's Office, Dossier on the Elmer Cárdenas Bloc, structures described by Fredy Rendón (evidence file, folio 45295).

⁵²³ Cf. Prosecutor General's Office, document: "Operation Cacarica" (evidence file, folio 19254). Also, the 14th Prosecutor, National Human Rights and International Humanitarian Law Unit in the indictment of Rito Alejo del Río on December 26, 2008, in proceeding 2332, assessed the confessions made by the paramilitaries in light of other probative elements and logical reasoning (evidence file, folios 8861 and *ff.*).

264. In its judgment of August 23, 2012, convicting Rito Alejo del Río Rojas for the murder of Marino López, the Eighth Criminal Court of the Bogota Special Circuit established the following: “[i]t should be noted that, although the witnesses Casarrubia and Mosquera (and at times alias “El Alemán”), in their second version, seek to make a kind of retraction or clarification, or to appear uncertain about a specific point in their initial testimony, the court consider that full credibility should be given to the initial statements, not only because of their spontaneity and congruence, but also because the supposed ‘clarifications’ contained in the subsequent confessions denote a certain precaution of the witness against giving a spontaneous version. It could be imagined that the existence of possible ‘pressures’ brought to bear on the witnesses [...] have made them fearful of narrating the truth of the events, which explains why they have chosen to try and decrease the forcefulness of their initial testimony or alter some aspect of what they had originally stated. However, this does not prevent the judge, based on the rules of sound judicial discretion, from weighing these versions and extracting the real implications of each one, especially as regards how a certain meaning of the testimony coincides with the rest of the body of evidence, particularly with what other deponents who are also aware of the same facts have stated. Thus, for example, it should be noted that the witness ‘alias HH’ says that Casarrubia is also aware of the connections between General del Río and self-defense groups [...], so that [Casarrubia’s] supposed ‘retraction’ lacks credibility.”⁵²⁴

265. The above, together with other probative elements allowed the Eighth Criminal Court of the Bogota Special Circuit to reach the conclusion that, “as the Prosecutor has stated [...] the ‘collusion’ between some soldiers of the 17th Brigade and the Self-Defense groups of the region emerged from the common purpose of combating the guerrilla.”⁵²⁵ Also, the same judicial decision added that, “it is not difficult to understand that this combined group had as commanders or leaders, in addition to Castaño, Mancuso and El Alemán [among others], General Rito Alejo del Río Rojas himself, who was therefore the person responsible for designing the strategy and/or operations together with them, as well as of assigning responsibilities to the seconds-in-command [...] who, in turn, transmitted the orders to the commanders of the operational and executing groups [...] all of which reveals a truly pyramidal organization.”⁵²⁶

266. The Court also takes note of the evidence provided by the State to substantiate its version of the facts and, among other probative elements, this is based on voluntary confessions of those demobilized (both paramilitaries and members of the guerrilla). However, the State has not indicated whether it has been possible to verify these confessions or whether, following an investigation by the Prosecutor General’s Office, this version of the events was rejected or confirmed by the competent authority. To the contrary, the evidence forwarded confirms that the version presented by the Commission and the representatives is based on confessions that have been investigated and verified by the Prosecutor General’s Office, so that they appear to be endowed with a more solid probative value than the non-verified confessions or those that have been verified and discounted.

267. Regarding other probative elements presented by the State to support its position, it can be observed that they are based on documents produced by the Colombian Armed Forces

⁵²⁴ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14805 and 14806).

⁵²⁵ The judgment added that the inhabitants of the region of Bijao “relate that the self-defense forces and the Army were moving around together in those places, on precisely the days on which Operation Genesis was implemented.” Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14806). Specifically, the judgment underscores the statements of J.A.Q., Luis Alirio Córdoba and Teodolino Mosquera as indicating that the soldiers and the paramilitaries were operating in conjunction in the area at the time of the events.

⁵²⁶ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14807). The judgment added that “the foregoing not only reflects that the accused, as commander of the 17th Brigade really was one of the leaders of this combined group, [...] but also, as already noted, that this combined group had a vertical structure with ‘leaders’ located at the head of the organization, followed by mid-level officials, and lastly the ground-level personnel responsible for implementing the group’s objectives.”

themselves, by statements of General del Río himself, or testimony and statements of other members of the Armed Forces (*supra* para. 246) and, consequently, they must be assessed in this context.

268. Furthermore, in relation to the bombing that may have occurred at “Loma del Cacarica,” the Court reiterates that there is evidence to indicate that bombing or machine-gunning from a helicopter of the Armed Forces could have taken place in the site located at Loma de Cacarica, around two kilometers to the north of Puente América, objective No. 6 of Operation Genesis (*supra* para. 237).

269. In addition to the observations and assessments on the context and on the specific pieces of evidence presented in this case, the Court, as in other cases and on a complementary basis, takes into consideration other indications, circumstantial evidence and logical inferences to reach conclusions in relation to the contradictory versions of the events. The Court has established that it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, “provided that consistent conclusions about the facts can be inferred from them.”⁵²⁷

270. The Court has indicated that, in principle, the burden of proving the facts on which the complaint is based corresponds to the plaintiff. Nevertheless, it has emphasized that, unlike domestic criminal law, in proceedings on human rights violations the State's defense cannot be based on the plaintiff's inability to provide evidence when it is the State that controls the means to clarify events that occurred on its territory.⁵²⁸

271. First, it is worth noting that both Operation Genesis and “Operation Cacarica” occurred or were initiated towards the end of February 1997; in other words, almost simultaneously.⁵²⁹ Nevertheless, although this could be an important element, it is not definitive; in particular taking into account that *a priori* the planning of the two operations was not carried out at the same time. In this regard, the former paramilitary Freddy Rendón stated before the Justice and Peace Unit of the Prosecutor General's Office that the Operation in the Cacarica area had been planned as of August or September 1996,⁵³⁰ while the events that led to Operation Genesis (the kidnapping of four foreigners, ten soldiers and children by the FARC) dates from January 1997 (*supra* para. 97).

272. Second, in addition to the correspondence of the timing, there was “geographical correspondence”⁵³¹ between the two operations, in the sense that “the objective [of both of them was] to occupy the sector of the Salaquí River and adjoining areas.”⁵³² Likewise, the

⁵²⁷ Cf. *Case of Velásquez Rodríguez. Merits*, para. 130, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009 Series C No. 196, para. 95.

⁵²⁸ Cf. *Case of Velásquez Rodríguez. Merits*, para. 135, and *Case of Kawas Fernández v. Honduras*, para. 95.

⁵²⁹ This conclusion arises from comparing the texts of document in the case file from different State authorities, such as: intelligence report attached to Operations Order No. 004 “Genesis” (evidence file, folios 5516 and 5519); Prosecutor General's Office, Powerpoint presentation and document “Operation Cacarica” (evidence file, folios 19263 and 19255 to 19259), and Prosecutor General's Office, Dossier on the Elmer Cárdenas Bloc, Report No. 260 of June 25, 2012 (evidence file, folio 45156).

⁵³⁰ Cf. Voluntary confession of Fredy Rendón Herrera, minute by minute version of the Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, on April 28, 2010, before the Prosecutor General's Office (evidence file, folio 18180).

⁵³¹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

⁵³² Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

evidence in the case file reveals that part of “Operation Cacarica” was implemented in geographical places that coincide with several of the objectives of Operation Genesis.⁵³³

273. To this should be added the fact that objective No. 6 (Puente América), located several dozen kilometers to the north of the Salaquí River, appears to have been the only one of the eight objectives that the Armed Forces did not attack, considering that, based on military intelligence, it had insufficient resources to attack all the objectives and because this was a lower priority than the others. The Court cannot fail to note that Puente América is located precisely at a point very close to the place where the paramilitaries entered the Cacarica river basin.⁵³⁴ It can even be presumed that Puente América could have constituted one of the places through which the paramilitary groups passed during their incursion into the Cacarica river valley.⁵³⁵

274. It is also worth repeating that there is strong circumstantial evidence and indications that the Army provided “covering fire,” machine-gunning or bombing in a sector situated about two kilometers to the north of Puente América (*supra* para. 237). This could indicate that the geographical correspondence or overlapping between the two operations did not arise only from the presence of the Armed Forces and of the Self-Defense Forces on the banks of the Salaquí River, but could also have taken place in sectors near Puente América.

275. Fourth, as emphasized by the Eighth Criminal Court of the Bogota Special Circuit in its judgment of August 23, 2012, the two operations took place within the framework of a series of actions designed to achieve a common purpose or objective: to overcome the FARC guerrilla that were present in the area.⁵³⁶ Fifth, as the said Eighth Court mentioned, the testimony of several peasants indicates that they had seen “joint movements by the Army and the self-defense forces.”⁵³⁷

276. Sixth, as the Eighth Criminal Court of the Bogota Special Circuit indicated in its judgment, it is surprising that “the movement of combatants of the Chocó Bloc from the Los Katios National Park to the Salaquí River occurred at precisely the same moment that this region was the objective of a large-scale military operation.” This court added that “[i]f it is considered that the Army also has the legal mandate to combat the self-defense groups, the advance of those paramilitary units towards the zone of operations is not logical; the proper course of action was precisely the contrary; that is, not to enter the area, to withdraw or to remain inactive in order to avoid confrontations with official troops who were carrying out a offensive in the region.”⁵³⁸

⁵³³ Cf. Intelligence report attached to Operations Order No. 004 “Genesis” (evidence file, folios 5516 and 5519); Prosecutor General’s Office, Powerpoint presentation “Operation Cacarica” (evidence file, folio 19253); Prosecutor General’s Office, document “Operation Cacarica” (evidence file, folios 19255 to 19259), and Prosecutor General’s Office, Dossier on the Elmer Cárdenas Bloc, Report No. 260 of June 25, 2012 (evidence file, folio 45156).

⁵³⁴ See, Prosecutor General’s Office, Powerpoint presentation and document “Operation Cacarica” (evidence file, folio 19263 and 19255 to 19259) and Colombian Military Forces, National Army, 17th Brigade Intelligence report attached to Operations Order No. 004 “Genesis” with its appendix (evidence file, folios 5515, 5516 and 5519).

⁵³⁵ According to the prosecutor, the paramilitaries went from the Atrato River towards the Cacarica River. On the way, they passed through Sautatá, and near Loma de Cacaricá, until they reached the mouth of the Perancho River; they then continued by the Cacarica River to Bijao, so that they had to pass by por Puente América. Cf. Prosecutor General’s Office, Powerpoint presentation and document “Operation Cacarica” (evidence file, folios 19263 and 19255 a 19259).

⁵³⁶ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

⁵³⁷ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

⁵³⁸ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14809).

277. Similarly, it should be stressed that although the Colombian Armed Forces also had the obligation to combat paramilitary groups or illegal armed groups, at the time of Operation Genesis there were no reports of a confrontation between the Armed Forces and these groups,⁵³⁹ even though both factions were in the area of the Salaquí River, in places very close to the objectives of Operation Genesis indicated in "Operations Order 004." The reports following Operation Genesis underscored confrontations with the guerrilla during its implementation,⁵⁴⁰ but made no allusion whatsoever to the paramilitary groups that were there and that, logically, the Army should have combatted because those groups were carrying out operations in the same geographical areas.

278. Furthermore, it should be emphasized that the version presented by the State does not provide an answer to several points related to the facts of the instant case. In particular, this version does not explain the reasons why the paramilitary units attacked the Cacarica communities on precisely the same days as Operation Genesis was being implemented on the banks of the Salaquí and Truandó Rivers, or regarding the fact that the State was unaware of the movements of paramilitary units that had set off from Cutí (Chocó group) and from the town of Turbo ("Pedro Ponte" group).⁵⁴¹ In this regard, it is striking that Luis E. Cardoza, expert witness proposed by the State, indicated that "intelligence, which is the basis for initiating operations, is an intelligence that must be continuously providing support to the operation; otherwise it would not be possible to modify the plans once the operations were underway."⁵⁴² Thus, the Court does not understand why the intelligence that was constantly "providing support to the operation," did not alert the Armed Forces to the massive displacements that were occurring and to the presence of paramilitary units and, if it did, why the Armed Forces did not act to prevent or deal with the causes of the displacement of hundreds of inhabitants. In addition, the arguments presented by the State do not explain why there was no fighting between paramilitary units and the Army, when the evidence indicates that the paramilitaries continued to advance towards the Salaquí River precisely when Operation Genesis was underway. Neither do they explain why the paramilitary units were present in several of the places identified as military objectives of Operation Genesis (in particular the State did not contest the paramilitary presence in the northernmost communities). Moreover, the State's version does not explain the statements of the demobilized paramilitaries, or several testimonies of peasants, which were investigated and verified by the Prosecutor General's Office, and also assessed by Colombian criminal justice, indicating that there had been collaboration with the Armed Forces.

279. Lastly, the Court notes that the version of the events that has been proved in the most reasonable, satisfactory and sufficient manner indicates: (a) that before and after the events, there was a regional and national context in which different types of connections have been reported between paramilitary groups and members of the Armed Forces; in the Urabá

⁵³⁹ Cf. Colombian Military Forces, National Army, 17th Brigade, Reports of March 6 and 20, 1997 (evidence file, folios 5528 to 5531 and 5532 to 5537). Neither the affidavit of January 31, 2013, of María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413) nor the testimony of Colonel Germán Castro, provided during the public hearing of February 12, 2013, refer to confrontations between paramilitary groups and the Army.

⁵⁴⁰ Cf. Colombian Military Forces, National Army, 17th Brigade, Report of March 6, 1997 (evidence file, folios 5528 and ff.), and Colombian Military Forces, National Army, 17th Brigade, Report of March 20, 1997 (evidence file, folios 5532 and ff.). See also, Affidavit prepared by María Paulina Leguizamón Zarate, expert witness proposed by the State (evidence file, folio 15413) and Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁵⁴¹ The foregoing is in stark contrast to the extremely precise intelligence information on the geographical place and the composition of the guerrilla units that appears in the intelligence reports prior to Operation Genesis. The intelligence report attached to Operations Order 004 has precise information on the exact number of guerrilla units at each objective. Cf. Testimony of Colonel Germán Castro, witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

⁵⁴² Cf. Testimony of Luis E. Cardoza, expert witness proposed by the State, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013.

Chocóano and in nearby areas there had also been situations of collusion between Army and paramilitaries (*supra* para. 248 and *ff.*); (b) the testimony of several former members of the Armed Forces indicates that Rito Alejo del Río Rojas, Commander of the 17th Brigade, allegedly had connections to paramilitary groups (*supra* para. 245); (c) the confessions of several demobilized paramilitaries that were investigated and verified by the Prosecutor General's Office, and also subjected to judicial assessment by the Eighth Criminal Court of the Bogota Special Circuit, indicate that these connections existed in the context of Operation Genesis (*supra* para. 245); (d) there is no record that the Prosecutor General's Office has been able to confirm the testimony of the paramilitaries indicating the contrary; rather this Office appears to have rejected them (*supra* para. 266); (e) various statements of inhabitants of the region indicate that they had seen members of the Self-Defense Forces patrolling together with members of the Army, on the banks of the Salaquí River, on the days on which Operation Genesis was being implemented (*supra* para. 275); (f) the "dossier" on the Elmer Cárdenas Bloc prepared by the Prosecutor General's Office, and other documents from this entity, indicate clearly that collaboration existed between that paramilitary group and the Colombian Armed Forces on the occasion of Operation Genesis (*supra* para. 76), and (g) a series of indications, logical inferences and circumstantial evidence can help establish the facts in this case (*supra* paras. 271 to 278).

280. Based on all the above, the Court concludes that, during the operations in the Cacarica River valley, acts of collaboration between members of the Armed Forces who executed Operation Genesis and the paramilitary units that were implementing "Operation Cacarica" occurred. Similarly, applying the rules of logic and sound judicial discretion, a hypothesis in which the paramilitaries would have been able to carry out "Operation Cacarica" without the collaboration, or at least the acquiescence of State agents, is unsustainable, or that this could have occurred without confrontations with units of the Armed Forces in the places in which both armed groups were present and where they must have coincided (*supra* para. 277).

B.2.3. Alleged violation of the right to life and integrity of Marino López Mena

281. Based on the above, the Court concludes that the cruel, inhuman and degrading acts to which Marino López Mena was subjected in the village of Bijao, as well as the deprivation of his life, committed by members of paramilitary groups, can be attributed to the State owing to the acquiescence or collaboration that agents of the Armed Forces provided to the operations of those groups, which facilitated their incursions into the communities of the Cacarica and encouraged and permitted the perpetration of this type of act. Consequently, the State is responsible for having failed to comply with its obligation to prevent violations and to protect the rights to life and to personal integrity of Marino López recognized in Articles 4(1), 5(1) and 5(2) of the Convention, as well as to investigate the facts effectively, in relation to the general obligation of guarantee recognized in Article 1(1) of this instrument.

282. Regarding the arguments of the representatives concerning the presumed violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, the Court will not rule in this regard because it finds that the facts have been analyzed sufficiently and the violations conceptualized under the rights to life and to personal integrity of Marino López, in the terms of Articles 4(1), 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument.

B.2.4. Alleged violation of the right of the Afro-descendant communities of the Cacarica not to be forcibly displaced

283. Regarding the forced displacement of the Cacarica communities, the Court notes that two distinct, but interrelated, legal issues have been raised that must be decided separately. The first refers to the State's alleged responsibility for the displacement of the inhabitants of

this region, while the second refers to the acts or omissions of the State once these people were displaced and in relation to their return. The second problem entails analyzing whether or not the State assumed the task of guaranteeing the rights to physical integrity, to dignity, and to the protection of the family, to protecting their rights without discrimination, and to the protection of the rights of children and adolescents. In this section, the Court will analyze the first issue and, in the following chapter, it will analyze the second (*infra* Chapter IX.2).

284. The facts of this case relate to situations that are characterized as internal forced displacement⁵⁴³ that, in some case, then led the victims to displace to other countries. The evidence indicates that most of those who crossed the border in search of international protection or asylum did so to the Republic of Panama. The Court notes that the status of displaced person of several of the presumed victims is not disputed, and that the State has only contested the number of presumed victims displaced. The dispute regarding the facts is based on the reasons for the displacement. While the representatives and the Commission indicate that it was due to the paramilitary incursions and to the bombing during Operation Genesis (*supra* para. 112), the State affirms that it was caused by actions of the FARC guerrilla and/or that it was the result of confrontations between paramilitaries and FARC guerrillas that had taken place on the territories of the Cacarica communities since before the events of the instant case and, in particular, as of 1996 (*supra* para. 115).

285. The Commission and the representatives argue that the bombing could have been one of the facts that, together with other acts of violence against the civilian population, caused the forced displacements of the Cacarica inhabitants (*supra* para. 113). The Court has already established that it has not been proved that the bombings carried out during Operation Genesis directly endangered the life and personal integrity of the Cacarica communities (*supra* para. 240); moreover, the bombings occurred several kilometers from the Cacarica settlements. Hence, the Court considers that it has not been provided with sufficient evidence to conclude that the bombings during Operation Genesis were the direct and main cause of the forced displacements.

286. Regarding the other hypotheses regarding the causes of the forced displacement, the Court reiterates that the hypothesis according to which the FARC guerrilla was responsible for the forced displacement is based on voluntary confessions⁵⁴⁴ that allude to the situation of Cacarica in general and rather imprecisely and, regarding which, no information was provided indicating whether or not the confessions had been verified by the Prosecutor General's Office.

287. In addition, regarding the version according to which it was the confrontations between the FARC guerrilla and the paramilitaries that had caused the displacement, the Court notes the following: (a) the statements of the demobilized paramilitaries refer to confrontations in Bijao, in Teguerre and on the banks of the Salaquí River, but do not mention other places or communities where they could have been combats, and (b) the testimony of the inhabitants of the region indicates that the causes of the displacement were the execution of Marino López and the threats and acts of violence perpetrated by paramilitary units.⁵⁴⁵ Added to these

⁵⁴³ Internally displaced persons are understood to be persons or groups of persons who have been forced or obliged to flee or to leave their homes or 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, and who have not crossed an internationally-recognized State border. Cf. United Nations Guiding Principles on Internal Displacements, U.N. Doc. E/CN.4/1998/53/Add.2 11 February 1998, para. 2. *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 187.

⁵⁴⁴ Cf. Fredy Rendón Herrera, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 28, 2010 (evidence file, folios 19157 to 19159), and Julio César Arce Graciano, Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica before the Justice and Peace Unit, 48th Delegate Prosecutor, Medellín, April 28, 2010 (evidence file, folio 19173).

⁵⁴⁵ Cf. Statement made by Emedelia Palacios Palacios before the Human Rights and International Humanitarian Law Unit, February 10, 2007 (evidence file, folio 8923); Testimony of J.B.V.P. before the Prosecutor General's Office, Human Rights and International Humanitarian Law Unit, December 19, 2002 (evidence file, folio 619); Testimony of

inconsistencies between the State's version and the evidence in the case file, the Court notes that this hypothesis also fails to explain why the inhabitants did not return to their homes once the confrontations ceased.

288. Furthermore, the hypothesis according to which it was the paramilitaries who deliberately caused the forced displacements when they entered the communities is more consistent with the available evidence and the context of the facts. This coincides with what the Prosecutor General's Office established in relation to Operation Cacarica,⁵⁴⁶ and also the Ombudsman's Office.⁵⁴⁷

289. The foregoing conclusions are consistent with a context of forced displacements caused in this and other regions of Colombia by paramilitary groups in order to take over the territories and collective property of the inhabitants, because the Court has been able to establish this in previous cases.⁵⁴⁸ This has also been verified by the Constitutional Court,⁵⁴⁹ the Ombudsman's Office,⁵⁵⁰ reports of the Historical Memory Center mentioned by expert witness Ciurlizza and by the deponent for information purposes proposed by the State,⁵⁵¹ the Public Prosecution Service,⁵⁵² expert opinions provided in the context of these proceedings,⁵⁵³ and other cases before the Court,⁵⁵⁴ as well as by reports of international agencies.⁵⁵⁵

Diego Luis Hinestrosa Moreno, before the Human Rights and International Humanitarian Law Unit. August 29, 2008, volume 2, case file 2332 (evidence file, folio 17697); Testimony of J.A.Q. of November 4, 2008, cited in the indictment in the proceedings against Rito Alejo del Río of December 26, 2008, volume 5 of case file 2332 (evidence file, folio 17533).

⁵⁴⁶ Cf. Prosecutor General's Office, Justice and Peace Unit, Dossier on the Elmer Cárdenas Bloc. Genesis. Context immediately before it was planned (evidence file, folios 44465 to 44535).

⁵⁴⁷ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 228).

⁵⁴⁸ Cf. *Case of the Ituango Massacres v. Colombia*, *Case of the Mapiripán Massacre v. Colombia*, and *Case of the La Rochela Massacre v. Colombia*.

⁵⁴⁹ See, among others, Constitutional Court T-025/04 of January 22, 2004 (evidence file, folio 897). Also, Colombian Constitutional Court, Second Review Chamber, Case No. 004, of January 26, 2009; Colombian Supreme Court of Justice, Criminal Cassation Chamber, Judgment of Second Instance in proceeding 35637 of June 6, 2012, Council of State, Contentious-Administrative Chamber, Third Section, Judgments proceeding No. 20001231000199803713 01, File: 18.436 of February 18, 2010, and proceeding: 20001-23-31-000-1998-03648-01(21417)B of November 19, 2012.

⁵⁵⁰ Cf. Ombudsman's Office. Decision No. 025 of the Ombudsman on the massive human rights violations and forced displacement in the Bajo Atrato region of Chocó, October 2002 (evidence file, folio 228).

⁵⁵¹ Cf. National Historical Memory Center, "¡Basta ya! Colombia: Memorias de guerra y dignidad. Informe General Grupo de Memoria Histórica", Imprenta Nacional, Colombia, 2013, pp. 71-76; "Justicia y Paz ¿verdad judicial o verdad histórica?", Colombia, 2012, pp. 526-530; "Silenciar en Democracia. Las masacres de Remedios y Segovia, 1982-1997", Ed. Semana, Colombia, 2010, pp. 176-180; "La masacre de Bahía Portete: Mujeres Wayuu en la mira", Ed. Semana, Colombia, 2010, pp. 23, 33, 65-68; "San Carlos: Memorias del éxodo en la guerra", Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 39-41, 108-116 and 183-186, and "Mujeres y guerra. Víctimas y resistentes en el Caribe colombiano", Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 30-36 and 103-104.

⁵⁵² Cf. Human Rights Office of the Public Prosecution Service, Decision of September 30, 2002, cited in the *Case of the Ituango Massacres v. Colombia*, para. 125.100.

⁵⁵³ Cf. Testimony of Javier Ernesto Ciurlizza Contreras, expert witness proposed by the Commission, before the Inter-American Court of Human Rights during the public hearing on February 12, 2013. Anthropological appraisal provided by Jesús A. Flores López, proposed by the representatives, before the Inter-American Court of Human Rights, on February 12, 2013.

⁵⁵⁴ Cf. Affidavit prepared by Federico Andreu Guzmán in the *Case of the Mapiripán Massacre v. Colombia*, p. 32 and the *Case of the La Rochela Massacre v. Colombia*, para. 57(a).

⁵⁵⁵ Cf. United Nations, Commission on Human Rights, Report of the Representative of the Secretary General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1, para. 25 (evidence file, folio 1571); United Nations High Commissioner for Human Rights, Reports on the Situation of Human Rights in Colombia, E/CN.4/2001/15, 20 March 2001, para. 131 (evidence file, folio 2601); E/CN.4/2005/10, 28 February 2005, p. 3 para. 3, p. 4 para. 4, p. 50 points 5 to 8 (evidence file, folios 2337 and 2348); E/CN.4/2004/13, 17

290. It is therefore reasonable to infer that the forced displacements occurred owing to the actions of the paramilitary groups that, within the framework of Operation “Cacarica,” ordered the inhabitants of the communities of the Cacarica River basin to abandon their territories, thus causing a massive displacement of the population. Consequently, taking into consideration that the State’s responsibility has already been determined in relation to the implementation of Operation “Cacarica” (*supra* para. 280), the Court concludes that the State is responsible for having failed to comply with its obligation to ensure the rights to personal integrity and not to be displaced forcibly (included in freedom of movement and residence), recognized in Articles 5(1) and 22(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of many of the displaced members of the Cacarica communities, who were present at the time of the paramilitary incursions.⁵⁵⁶ Other sectors of the communities were also displaced, but not all of them form part of the group of presumed victims in the instant case.

IX.2.
CONDITIONS OF DISPLACEMENT AND RETURN OF MEMBERS OF THE CACARICA
COMMUNITIES FOLLOWING THE EVENTS OF FEBRUARY 1997
(Articles 5(1), 22, 17, 19, 1(1) and 2 of the Convention)

A. Arguments of the Commission and of the parties

Freedom of movement and residence (Article 22 of the American Convention)

291. The Commission indicated that the “circumstances of this case and the special and complex situation of risk of the violation of the human rights of those displaced, include but also go beyond the content of the protection due by the States under Article 22 of the Convention”; thus, it considered the State responsible for the violation of the said article of the “Convention to the detriment of the members of the communities displaced from Cacarica and of the women heads of household who live in Turbo.”

292. The Commission indicated, in particular, that “the displaced Afro-descendants suffered a series of consequences which had a disproportionate impact on the women and children such as family separation, the change in living conditions in the settlements in overcrowded conditions, the lack of access to basic services, food, and adequate health care services, as well as the subsequent increase in disease and malnutrition.” It added that, “within these parameters and bearing in mind the complexity of the phenomenon of internal forced displacement,” the facts described reveal the State’s responsibility for impairing the rights to freedom of movement and residence, personal integrity, protection of the family, the rights of the child, the right to property, and the guarantee of respect for these rights without discrimination, that were violated by the forced displacement and by its consequences. The Commission emphasized that the State had incurred international responsibility for the forced displacement at two different

February 2004, paras. 23, 24, 65 and 73 (evidence file, folios 2382, 2383, 2392, and 2393); E/CN.4/2003/13, 24 February 2003, paras. 9, 34, 44, 74, 75 and 77; (evidence file, folios 2445, 2450, 2452, 24659 and 2460); E/CN.4/2002/17, 28 February 2002, para. 62. (evidence file, folio 2520); E/CN.4/2000/11, 9 March 2000, paras. 25, 110 and 111 (evidence file, folios 2640, 2657 and 2658); E/CN.4/1998/16, 9 March 1998, paras. 29, 90, 91 and 175 (evidence file, folios 744, 751 and 762); United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Fifth periodic report. Colombia, 18 September 2002, CCPR/C/COL/2002/5, para. 452; Office of the United Nations High Commissioner for Human Rights, Regional Representative for Latin America and the Caribbean, Compilation of concluding observations of the Human Rights Committee on countries of Latin American and the Caribbean (1977-2004), pp. 162, 164 and 179; See also: Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (by year of the CEACR session) CEACR 2009/80th session. Colombia. Individual observations. ILO Convention 169, individual observation 2008. See also: United Nations, UNHCR. Application of General Assembly resolution 60/251 of 15 March 2006, entitled “Human Rights Council”, Report presented by the Representative of the Secretary-General on the human rights of the internally displaced persons, Walter Kälin, para. 1.

⁵⁵⁶ See Annex I.

but interrelated levels: first, owing to its active role in originating the displacement and, second, owing to the lack of an adequate and effective response following the displacement.

293. The representatives affirmed that “the State violated massively the right to freedom of movement of the victims of this case,” owing to “three fundamental elements for establishing this responsibility”: (a) “the absolute limitation of the freedom of movement of the members of the communities during the days on which the paramilitaries and soldiers were carrying out the incursion into the Cacarica river basin”; (b) “the massive forced displacement of the Cacarica communities caused by the State itself owing to the military operation and the paramilitary strategy, and which was channeled towards Turbo by the State itself,” and (c) the fact that the “State has not taken measures aimed at ensuring the complete return of the communities to their territories, and to their family and communal life.”

294. The State observed that it was not responsible for the presumed violation of the freedom of movement and residence of the inhabitants of the Cacarica river basin. It affirmed, in particular, that in “these proceedings it has not been sufficiently proved that the mobilization of the population of the communities of the river basin [...] was caused by an act or omission that can be attributed to State agents,” and added that the State had taken “the necessary actions to provide emergency humanitarian aid, as well as to ensure the return and permanence of those affected.” In this regard, it indicated that “the displacement was a *de facto* situation that was not caused by the Armed Forces,” and mentioned that the State had taken a “series of actions in favor of those displaced.”⁵⁵⁷ The State maintained that it had implemented public policies “based on the characteristics and the situation of the displaced population, so that each group of the population (women, children, persons with disabilities, indigenous people, and Afro-Colombians) was attended according to its needs, thus ensuring a public policy with a differentiated approach.”

Domestic legal provisions (Article 2 of the American Convention)

295. The Commission indicated that the State’s responsibility did not arise merely from the fact that it had played an “important role from the start,” but that “it continued to be constituted owing to the failure to comply with its minimum obligations” towards the displaced population. It pointed out two obligations of “special relevance”: the obligation to provide and facilitate humanitarian assistance, and that of facilitating the return of those displaced. On this point, it indicated with regard to the difference between humanitarian aid and reparation to the victims of forced displacement that “humanitarian assistance is part of the State’s general

⁵⁵⁷ Specifically, the State indicated that the “Government’s first direct approach to the issue was by CONPES document 2804 of 1995, in which it approved the National Program for Comprehensive Assistance to People Displaced by Violence. Owing to institutional shortcomings, a new CONPES document was issued, No. 2924 of 1997, entitled National System for Comprehensive Assistance to People Displaced by Violence [...]. Nevertheless, in view of the urgency of the situation, the Executive and the Legislature combined efforts and Law 387 of 1997 was enacted. This law ordered comprehensive attention to the displaced population based on three stages of attention to displacement: Prevention, Humanitarian attention, and Economic stabilization [...]” The State indicated that, “even though at the time of the events, Law 387 of 1997 was not in force adopting measures to prevent forced displacement, and to provide attention, protection, and economic stabilization and consolidation to those displaced internally owing to the violence in the Republic of Colombia, which came into force on July 18 that year, as of that time, the attention and reparation to those displaced came under the coordination of the former Social Solidarity Network that carried out activities to strengthen the management mechanisms and instances that, at the different territorial levels, implemented the System of Comprehensive Attention to the Displaced Population.” The State also indicated that it had: “(i) provided emergency humanitarian assistance to the population that moved from the Cacarica River basin to Bocas del Atrato and to the municipality of Turbo; (ii) in order to ensure the sustainability of the return of the inhabitants, it had created a verification commission with the participation of a substantial number of Government ministries and institutions and international Governments and cooperation agencies, as well as representatives of the presumed victims; (iii) within this framework, programs on health, housing, production projects, and family reunification and attention were implemented, among many other actions designed to attend to the displaced population, and (iv) the Government also ordered the granting of collective land titles over more than 100,000 hectares, to the communities of the river basin.” It also mentioned as a positive measures the award of collective titles to the land, and the intervention of different entities that provided assistance, including the Joint Verification Commission, the Social Solidarity Network, and the Colombian Social Welfare Institute.

obligation towards any inhabitant with such needs, while reparation involves an obligation under international law to repair the consequences of a conduct that violated the Convention and thus reinstate, to the extent possible, the rights of the victims.” The representatives agreed with the Commission as regards the absence of adequate measures at the domestic level to ensure the rights and freedoms established in the Convention.

296. The State indicated that it had adopted “a series of legislative, administrative and judicial measures, including numerous laws, decrees, documents of the National Council for Economic and Social Policy (CONPES), and presidential directives and decrees [...]” setting up “a complete institutional framework” to provide attention to the displaced population and thus ensure their rights before, during and after the displacement.

Right to personal integrity (Article 5(1) of the American Convention)

297. The Commission indicated 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 threats, harassment and acts of violence during the period of displacement,” constituted a violation of the right to personal integrity. The Commission also maintained that the State had “not adopted the necessary measures to prevent the violation of the right to personal integrity of the members of the communities of the Cacarica river basin in view of the imminent displacement” and, as a result of this, the State had “not established the conditions to allow all those displaced to return safely.” It considered that although the State had “made some efforts to try to provide solutions to the displaced,” the measures adopted by the State “were neither sufficient or appropriate to reverse the vulnerable situation of the displaced”; therefore, it considered that the State was responsible for the violation of Article 22 of the Convention in relation to Articles 5 and 1(1), to the detriment of the members of the displaced Cacarica communities associated in CAVIDA and the women heads of household who live in Turbo.

298. The representatives argued that “the conditions to which the victims in this case were subjected for almost four years of displacement constituted inhuman treatment and, therefore, a violation of the right to personal integrity of the men, women and children who were in shelters experiencing makeshift conditions.” Accordingly, they considered that the Colombian State had violated the “right to mental and moral integrity of the inhabitants of Cacarica and, also, the obligation to protect them.” They also argued that the State, “as guarantor of the rights of those subject to its jurisdiction, must also take responsibility for the right to personal integrity of those who are in its custody,” so that if, when such events occur, the authorities do not conduct a genuine investigation into the events and fail to prosecute those responsible, it can be attributed with international responsibility for such events” under Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.

299. The State observed that it was not internationally responsible for the violation of the right to personal integrity of the inhabitants of the Cacarica River basin because “there was no relationship of cause and effect between the actions deployed by the State agents in Operation Genesis [...] and the displacement of the communities that inhabited the Cacarica river basin.” It also maintained that “its agents were not responsible for an omission that could be attributed to the State,” and there had not been an “absence of reasonable foresight in relation to the actions of third parties.” It added that the State had acted “legitimately and legally, and if the military and police operations against illegal armed groups are conducted under these conditions, they cannot entail international responsibility for the State.” Moreover, it indicated that the displacement had “been voluntary and not forced, so that no wrongful act had occurred that could give rise to the State’s international responsibility.”

Right to protection of the family and not to be the object of arbitrary interference with family life (Articles 17(1) and 11(2) of the American Convention)

300. The Commission argued that, owing to the forced displacement, the families of the Cacarica communities had to abandon their homes and settle, as displaced persons, in dire

humanitarian conditions for four years.” It argued that, “during the move, they lost their family members, 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.” It also indicated that, owing to the living conditions in the settlements, “the displaced were unable to have the type of family life they enjoyed” in accordance with their traditional customs, so that the State “failed to adopt measures to carry out a prompt return process,” which occurred “after four years.” On this basis, it affirmed that the State was responsible for the violation of Article 22 of the Convention, in relation to its Articles 11(2), 17(1) and 1(1), to the detriment of the members of the displaced Cacarica communities associated in CAVIDA and of the families who live in Turbo; and it was also responsible for the violation of Article 22 of the Convention, in relation to its Articles 11(2), 17(1), 19 and 1(1), to the detriment of the children of this community.

301. The representatives added that “the State’s obligations to protect the family must be put into practice by the adoption of measures of a legislative, administrative or any other nature that are aimed at strengthening the family, or at respect for different types of family and, thus, of the different cultures, under conditions of equality and non-discrimination among their members.” They also indicated that “the crimes affected the family groups directly; the forced displacement split up families that were kept separated for years in some cases; in addition, some families lost their loved ones and, because of this, women had to become heads of household, and children lost their fathers, and the families had to be restructured owing to these events.”

302. In this regard, the representatives argued that the violations of the rights of the family were constituted “by the fact of the displacement, which destroyed the community ties and interrelationships; moreover, the family should be considered in its broadest sense, according to the customs of the Afro-descendant group whose rights were violated, because the impairment of cultural identity manifested by the loss of traditions and practices within the communities as a result of the rupture of the family structures and the impossibility of living their lives on their ancestral territory should not be ignored.” Consequently, they asked the Court to “declare the State responsible for the violation of Article 17 of the [Convention], to the detriment of the 531 persons of the displaced communities, associated for their return in [CAVIDA] communities, of the displaced women who live in Turbo and, intermittently, between Turbo and other towns in Colombia.”

303. The State argued that it had respected and ensured the right to protection of the family in keeping with Article 17 of the American Convention, and that it had “supported the family reunification stage of the displaced community.” In this regard, the State affirmed that it had: (a) “provided emergency humanitarian assistance to the displaced population”; (b) adopted measures for the return and for reparation,” and (c) “among the measures, some were directly aimed at the protection of the family and its reunification, and to respond to the rights to food, health and education of the children.”⁵⁵⁸

Rights of the child (Article 19 of the American Convention)

304. The Commission affirmed that the children of the displaced communities “suffered the violence of the armed operations leading to their displacement, as well as the consequences of the displacement itself; including the impact on their living conditions,” and considered that the

⁵⁵⁸ In particular, it described the “Additional programs and assistance to those delivered under the CMV. In addition to the aid delivered under the CMV, it should be indicated that, in Colombia, under the current National Development Plan: Prosperity for All, a new institutional framework has been designed that reveals the State’s efforts to guarantee social inclusion and mobility so that all Colombians, regardless of the region they come from, their status as victims of armed conflict, their ethnic origin, gender, age, or disability, have equal opportunities to accede to the benefits of development and, thus, to take advantage of the fundamental tools that will allow them to construct their own destiny. [...] Program: *Más Familias en Acción* [...] Strategy: Food Security Network. On March 31, 2008, the National Council for Economic and Social Policy approved the National Food Security and Nutritional Policy (PSAN). [...] Production inclusion: [...] Income-generation policy for communities living in extreme poverty and/or displacement [...].”

State was internationally responsible for the violation of the rights of the child owing to the failure to protect the family. It also indicated that the State “failed to adopt measures to prevent the displacement of these children, and to adopt special and differentiated measures to protect them and to attend to their special needs during the displacement, given their state of great vulnerability and the differentiated impact caused by forced displacement.” Thus the Commission concluded that the State was responsible for the violation of Article 22 of the Convention, in relation to its Article 19, to the detriment of displaced children, members of the Cacarica communities associated in CAVIDA and the children of the women living in Turbo.

305. The representatives indicated that the children's right to equality was violated in this case because: (a) the State failed to take the necessary positive measures with regard to this group of Afro-descendants who were traditionally discriminated against, and based on their condition as children; (b) during the displacement, the children were subjected to exceptional risks that prevented their development and inclusion in their traditional social milieu, depriving them of the culture and customs of their ethnic group, as well as in degrading conditions in which they could not exercise their rights under equal conditions to the rest of the population, and (c) while they were away from their ancestral territories, they were unable to exercise their rights to education, health and others, thus experiencing “exceptional situations of discrimination such as the rejection of their peers.” They asked that the Court declare the State responsible for the violation of Articles 4, 5, 11, 17, 19, 21, 22 and 24 of the Convention, to the detriment of the children of the communities displaced from the Cacarica River.

306. The State observed that it had not violated the rights of the child, because: (a) there was no causal nexus between the displacement and Operation Genesis”; (b) “the presumed victims were not identified and individualized as established in Article 35 of the Court’s Rules of Procedure,” and (c) “once the displacement had occurred, the State took steps to ensure the children's rights.” Thus, it indicated that the State of Colombia was not responsible for the violation of the rights contained in Article 19 of the Convention and considered that, in compliance with the obligation to respect and ensure the rights of the child, it had “adopted measures addressed at community development to benefit the community, especially the children.”⁵⁵⁹

*The right to non-discrimination and the right to the protection of honor and dignity
(Articles 24 and 11(1) of the American Convention)*

307. The Commission observed that the State had “not complied with its international obligations of protection in favor of a group at high risk of human rights violations that was subject to special protection.” It also indicated that this lack of protection “in addition to being discriminatory, constituted a failure to comply with the State’s obligation to protect and respect the social and cultural integrity of the Afro-descendant communities.” It emphasized that “the lack of differentiated attention for the displaced, owing to their situation of greater vulnerability also constituted a failure to comply with the international obligations assumed by the State.”

308. Furthermore, the Commission stated that, in the instant case, the group of victims is composed of displaced Afro-descendants, victims of the armed conflict, of whom more than 100 are children, and numerous others are women, while a group of the latter are “women heads of

⁵⁵⁹ The State indicated that in “compliance with the agreements and commitments made, the Ministry of Education has executed the following activities” Education: during the emergency or humanitarian assistance stage: training of young volunteers from the community in the Pavarandó camp in order to provide teachers, adults and youth with conceptual and methodological tools to develop alternative educational procedures to the established models. [...] Education Compensation Fund [...] Technical Assistance. [...] Provisions of 400 desks [...] Teacher training [...] Actions of the Chocó Regional Office of the ICBF [Colombian Family Welfare Institute] in the Cacarica River basin [...]. Health: the State informs the Court [...] that the basic services have been provided through the Health Brigades coordinated by the Ministry of Social Protection and the Turbo Hospital. In some cases, people have been attended in the Turbo and Apartadó hospitals and, at times, when necessary, they are transferred to Medellín [...].”

household,”⁵⁶⁰ and indicated that the notion of “intersectionality” applies to this group of victims, owing to the “many kinds of discrimination,” from a combination of causes that include “their displaced status, their gender, ethnicity, and condition as children.”

309. The Commission indicated that the life of the women has been severely affected, because they “have had to assume responsibility for the financial support of their families, to learn to acknowledge and solve their own problems in the world at large, when they have to go to the different State and private agencies to obtain the humanitarian assistance established by the laws on internal forced displacement, to participate in diverse organizations to claim their rights, and to manage complex spatial and cultural references that are different from those of their place of origin.”

310. Consequently, the Commission concluded that the State was internationally responsible for failing to comply with its obligation to ensure and respect rights without any discrimination and the right to equal protection before the law owing to the harm caused by Operation Genesis, the paramilitary incursions, and the subsequent forced displacement suffered by the Afro-descendant communities of Cacarica associated in CAVIDA, and by the women heads of household living in Turbo, in accordance with Article 22 in relation to Articles 1(1) and 24 of the American Convention.

311. The representatives indicated that “the status of the victims and their special world vision, which is expressed in their uses and customs, reveals the need for the legal analysis of this case to be undertaken from a differentiated perspective that recognizes this.” According to the representatives, the discrimination is revealed, first, by the failure to comply with the obligation to ensure the rights of all citizens in equal conditions, because the community was in a situation of vulnerability and discrimination owing to having been abandoned and suffered from lack of action by the State and, second, because of the measures taken by the State that placed the members of the community in inhuman and discriminatory situations that disregarded their cultural customs.

312. The representatives also maintained that, in Colombia, “racial discrimination attains levels that are a cause for concern.” They indicated that Afro-descendants are identified by the word “*negro/a*” (black), which is used “pejoratively” or in a “despective manner.” They also indicated that, in that context, “the members of the communities were labelled guerrillas, in order to justify the violence used against them and the displacement of which they were victim, generating feelings of guilt and criminalization in the collective conscience.” In addition, the representatives indicated that their “honor and reputation were adversely affected, because being categorized as a member of the guerrilla in [... Colombia], not only converts an individual into a military objective, but also distorts the image of that individual before the State and the population in general” in violation of Article 11(1) and 11(2) of the American Convention.

313. Lastly, the representatives affirmed that, “when the paramilitaries cut off the head of Marino López and took it like a trophy to a large flat area of the village where they exclaimed in front of the people ‘look, he’s got a monkey’s face, the son of a bitch,’ they harmed the honor and reputation not only of Marino López and his family, but also of all the members of the Afro-descendant communities.”

314. The State considered that it is not responsible for the “presumed violation of the right to equality” and indicated that in “these proceedings, sufficient evidence has been provided to prove that the emergency humanitarian aid to the displaced and the actions to ensure the

⁵⁶⁰ Regarding the women heads of household, the Commission affirmed that the “changes in roles and responsibilities arising from the displacement are fundamentally associated with the need to guarantee the basic needs of the families and with the opportunities they find to achieve this,” as a result of which “the displaced women have had to assume responsibility for the financial support of their families, to learn to acknowledge and solve their own problems in the world at large, when they have to go to the different State and private agencies to obtain humanitarian assistance,” among other activities.

return and permanence of those affected, were implemented without any type of negative discrimination based on race or any other condition of the affected population.”

B. Considerations of the Court

315. This Court has indicated in other cases that, owing to the complexity of the phenomenon of internal displacement and the broad range of human rights it affects or jeopardizes, and based on the circumstances of special vulnerability and defenselessness in which those displaced usually find themselves, their situation can be understood as a *de facto* situation of lack of protection.⁵⁶¹ According to the American Convention, this situation obliges the States to adopt measures of a positive nature to reverse the effects of their said situation of weakness, vulnerability and defenselessness, even in relation to the actions and practices of private third parties.⁵⁶²

316. The Colombian Constitutional Court has referred to the situation of vulnerability of the displaced as follows: “owing to the circumstances that surround internal displacement, the persons [...] who are obliged ‘to abandon their place of residence and their usual economic activities hastily, and migrate to another place within the borders of national territory’ in order to flee from the violence generated by the internal armed conflict and by the systematic disregard for human rights or international humanitarian law, are exposed to a much greater degree of vulnerability, which entails a gross, massive and systematic violation of their fundamental rights and, for the same reason, warrants granting special attention from the authorities. Those displaced by the violence are in a situation of weakness that makes them deserving of special treatment by the State.”⁵⁶³

317. Similarly, the Constitutional Court has indicated that the vulnerability of the displaced is accentuated by their rural origins and, in general, has a particularly intense effect on women who are heads of household and represent more than half the displaced population. Internal displacement also creates a security crisis, because the groups of internally displaced become a new source or resource for recruitment by paramilitary, drug-trafficking and guerrilla groups.⁵⁶⁴ Among the many adverse effects of the resettlements resulting from the internal forced displacement, in many cases, the return home of the displaced is carried out without the necessary conditions of security and dignity for them.⁵⁶⁵ In addition to the severe psychological effects, the following have been stressed: (a) loss of land and dwelling; (b) marginalization; (c) loss of home; (d) unemployment; (e) deterioration in living conditions; (f) increase in diseases and in mortality; (g) loss of access to property; (h) food insecurity, and (i) social dislocation, impoverishment, and an accelerated deterioration of living conditions.⁵⁶⁶

318. As verified in other cases, the Court takes note that, in order to deal with the problem of internal displacement, Colombia has taken a series of measures⁵⁶⁷ at the legislative level

⁵⁶¹ Cf. *Case of Chitay Nech et al. v. Guatemala*, para. 141.

⁵⁶² Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 179, and *Case of the Río Negro Massacres v. Guatemala*, para. 174.

⁵⁶³ Cf. Colombian Constitutional Court, Judgment T-025 of January 22, 2004 (evidence file, folios 4363 and ff.). See also: *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 211.

⁵⁶⁴ Cf. United Nations, Economic and Social Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, E/CN.4/2005/48, 3 March 2005, para. 38. Also, *Case of the Mapiripán Massacre v. Colombia*, para. 175, and *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 212.

⁵⁶⁵ Cf. United Nations, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2003/13, 24 February 2003, para. 94 (evidence file, folio 3717).

⁵⁶⁶ Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 175, and *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 213.

⁵⁶⁷ Cf. Colombian Constitutional Court, Judgment T-025 of January 22, 2004 (evidence file, folios 897 and ff.), and its follow-up rulings, including Ruling 005 of January 26, 2009, on protection of the fundamental rights of the Afro-

(including the recent Law on victims and land restitution), and also the administrative and judicial levels, including numerous laws, decrees, documents of the National Council for Economic and Social Policy (CONPES),⁵⁶⁸ presidential decrees and directives. Nevertheless, as this Court has already indicated in other cases, the Constitutional Court has established “the existence of an unconstitutional state of affairs in the situation of the displaced population owing to the discrepancy between the severity of the effects on the rights recognized by the Constitution and developed by the law, on the one hand, and the volume of resources devoted to ensuring the effective enjoyment of those rights and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other.”⁵⁶⁹

319. In this case, the representatives and the Commission indicated that the State had failed to comply with its obligations to ensure the rights to personal integrity, to honor and dignity, to the protection of the family, and measures of protection for children, to the detriment of the persons displaced from the Cacarica river basin. They also indicated that the State had not complied with its obligation to ensure and respect the rights without any discrimination based on race or color, and the right to equal protection of the law owing to the harm caused by Operation Genesis, the paramilitary incursions, and the subsequent forced displacement suffered by the Afro-descendant communities of the Cacarica associated in CAVIDA and by the women heads of household who live in Turbo.

B.1. Rights not to be displaced and to personal integrity

320. Starting in January 2000, one segment of the communities displaced from Cacarica began the process of returning to their territory, while another group of the displaced population chose to locate definitively in the town where they had taken refuge following the respective agreement signed with the Government (*supra* para. 125). Meanwhile, the displaced who returned to Cacarica had remained in a situation of displacement for between three and four years (*supra* para. 126). Also, there is evidence that, at that time, the factors that had led to the displacement in 1997 persisted in the region, above all the situation of violence and the presence of illegal armed groups. In particular, it is considered to be a proven fact that the communities of “Esperanza en Dios” and “Nueva Vida” continued to be subjected to threats, harassment and acts of violence by the armed groups (*supra* para. 129).

descendant population victim of forced displacement, in the context of the unconstitutional state of affairs declared in Judgment T-025 of 2004 (evidence file, folios 1681 and *ff.*); Ruling 092 of April 14, 2008, on measures of protection for the fundamental rights of the women victims of forced displacement (evidence file, folios 2756 and *ff.*); report of the national Government to the Constitutional Court on progress with regard to the unconstitutional state of affairs declared in Judgment T-025 of 2004 (evidence file, folios 13280 and *ff.*); Law 1448 of 2011, on victims and land restitution (referred to in “The transitional justice arrangement in force in Colombia,” provided by the Vice Minister of Justice, Miguel Samper, deponent for information purposes proposed by the State, during the hearing held before the Inter-American Court of Human Rights on February 11, 2013, evidence file, folio 16521), and its regulations, Decree 4800 of 2012 (referred to in “The transitional justice arrangement in force in Colombia,” provided by the Vice Minister of Justice, Miguel Samper, deponent for information purposes proposed by the State, during the hearing held before the Inter-American Court of Human Rights on February 11, 2013 (evidence file, folio 16522)

⁵⁶⁸ Cf. National Planning Department, Document No. 2804, “National Program for Comprehensive Assistance to People Displaced by Violence,” Santafé de Bogotá, D.C., September 13, 1995 (evidence file, folios 45537 and *ff.*); CONPES document No. 2924, “National System for Comprehensive Assistance to People Displaced by Violence,” Santafé de Bogotá, D.C., May 28, 1997 (evidence file, folios 45559 and *ff.*); CONPES document No. 3616, “Guidelines for the income-generation policy for the communities living in extreme poverty and/or displacement, Bogotá, D.C., September 28, 2009 (evidence file, folios 45579 and *ff.*); CONPES document No. 3057, “Action Plan for prevention of and attention to forced displacement,” Santafé de Bogotá, D.C., November 10, 1999 (evidence file, folios 45721 and *ff.*); CONPES document No. 3115, “Distribution of the Sectoral Budget to comply with CONPES 3057, Action Plan for prevention of and attention to forced displacement,” Santa Fe de Bogotá, D.C., May 25, 2001 (evidence file, folios 46113 and *ff.*); CONPES document No. 3400, “Goals and prioritization of budgetary resources to attend the population displaced by violence in Colombia,” Bogotá, D.C., November 28, 2005 (evidence file, folios 46123 and *ff.*).

⁵⁶⁹ Cf. Colombian Constitutional Court, Judgment T-025 of January 22, 2004 (evidence file, folios 897 and *ff.*). See also: *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 214.

321. It has been proved that, between 150 and 320 of the families displaced towards the end of February 1997 were accommodated in the Turbo sports arena and in two shelters built with the aid of international agencies and Government resources, through the former Social Solidarity Network (*supra* para. 117). Most of these families remained in Turbo and in the El Cacique - Bahía Cupica (Chocó) hacienda for more than two years. Numerous families were split up or separated as a result of the displacement. It has also been possible to verify that, in Turbo, the living conditions of the displaced were characterized by overcrowding, absence of privacy, lack of basic health care services, unbalanced and insufficient nutrition, and insufficient or poor quality water. In November 1997, aid was officially suspended to 75 families “due to lack of funds.” All the foregoing led to the proliferation of diseases, with the risk of an epidemic. The Court has also been able to confirm that the measures taken by the State to protect the population were insufficient (*supra* para. 118).

322. During the time that the displacement lasted for those who returned, the State provided limited aid for the return: (a) humanitarian aid to 10 families who underwent voluntary repatriation from Jaqué (Panama) to Nueva Vida in 2004; (b) actions in the Cacarica river valley addressed at providing attention to the communities;⁵⁷⁰ (c) food for Cupica and Turbo from May 1999 and January 2000, respectively, until December 2000, valued at 1,243,475,684 Colombian pesos; (d) payment of public services of water and electricity for Turbo and the two shelters, valued at 68,233,062 Colombian pesos, and (e) provision of “toiletry kits, dishes, cooking utensils and stoves valued at 172,676,618 Colombian pesos.”⁵⁷¹

323. The measures of basic assistance provided by the State during the period of displacement were insufficient, because the physical and mental conditions that those displaced had to face for almost four years were not in keeping with the minimum standards required in such cases. The overcrowding, the food, the supply and management of water, as well as the failure to adopt measures with regard to health care, reveal non-compliance with the State's obligation to provide protection following the displacement, with the direct result of the violation of the right to personal integrity of those who suffered the forced displacement.

324. Consequently, the State failed to comply with its obligations to ensure humanitarian assistance and a safe return, within the framework of the right to freedom of movement and residence, and the protection of the right to personal integrity, recognized in Articles 22(1) and 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the Cacarica communities that were in a situation of forced displacement over a three- to four-year period.⁵⁷²

B.2. Right to protection of the family

325. The Court has indicated in other cases that the right to protection of the family involves, among other obligations, that of promoting as extensively as possible, the development and enhancement of the family unit.⁵⁷³ In this case, the Court notes that there is information on overcrowded conditions, lack of privacy, and harm to the family structures (*supra* para. 118). This reveals that, while the situation of displacement of the Cacarica communities lasted, the

⁵⁷⁰ Cf. Note of the Ministry of Foreign Affairs of August 27, 2009, para. 111 (evidence file, folio 7597): Visits to provide comprehensive care in 2005, and one in 2006, for medical-surgical care; food, medicines, and psychosocial care; in coordination with *Comunidad Hábitat Finanzas* (CHF), schools were constructed in the districts of Bogotá (1), San Higinio (1) and El Limón (1), and 150 temporary shelters were erected in San Higinio, Bocas del Limón, La Tapa, Puente América, Santa Lucía and Barranquilla.

⁵⁷¹ Cf. Joint Verification Commission, Management Report, March 2004 (evidence file, folios 4986 and ff.).

⁵⁷² See Annexes I and III.

⁵⁷³ Cf. *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 125, and *Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 145. See also, *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 66.

State did not take the positive measures required to ensure the due protection and integrity of the displaced families, whose members were split up or separated.

326. Nevertheless, neither the Commission nor the representatives presented sufficient information to determine the specific characteristics of the families within the community life of the Afro-descendant communities of the Cacarica. Thus, although they provided some information on the displacement conditions, when indicating that these communities had a communal lifestyle, the Commission and the representatives failed to explain or provide grounds for the specific ways in which the members of these communities exercised their rights of the family or, consequently, the specific harm that the events caused. Therefore, the Court has insufficient evidence to analyze the facts under Article 17 of the Convention.

B.3. Rights of children and adolescents

327. The Court has established that the alleged violations of other articles of the Convention of which children are presumed victims must be interpreted in light of the *corpus iuris* of the rights of the child. This means that in addition to granting special protection to the rights recognized in the American Convention, Article 19 establishes an obligation of the State to respect and to ensure the rights recognized to children in other applicable international instruments.⁵⁷⁴ It should be recalled that the Court has indicated that “the special vulnerability owing to their condition as children is even more evident in a situation of internal armed conflict, [...] because they are the least prepared to adapt or respond to this situation and, sadly, it is they who suffer its excesses disproportionately”,⁵⁷⁵ hence, in this context, adequate attention must be provided to them and the appropriate measures taken to facilitate the reunification of families that have been temporarily separated.⁵⁷⁶

328. In addition, any decision of the State, society or the family that entails a limitation to the exercise of any right of a child must take into account the principle of the best interests of the child and be rigorously in keeping with the provisions that regulate this matter.⁵⁷⁷ This regulating principle of the normative on the rights of the child is based on the dignity of the human being, on the inherent characteristics of children, and on the need to foster their development taking full advantage of their potential. Similarly, it should be noted that, in order to ensure, to the fullest extent possible, the prevalence of the best interests of the child, the preamble to the Convention on the Rights of the Child establishes that the child requires “special safeguards and care,” and Article 19 of the American Convention indicates that the child must receive special “measures of protection.”⁵⁷⁸ Hence, it is necessary to assess not only the requirement of special measures, but also the particular characteristics of the situation in which the child finds himself.⁵⁷⁹

329. Regarding the conditions at the displacement sites, the Court has been able to verify that the State carried out a series of actions designed to provide assistance to the communities once they returned to the Cacarica region (*supra* para. 127). In particular, the State provided

⁵⁷⁴ Cf. *Case of Gelman v. Uruguay*, para. 121, and *Case of Forneron and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 44.

⁵⁷⁵ *Case of the Mapiripán Massacre v. Colombia. Merits, and reparations*, para. 156, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 239.

⁵⁷⁶ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 238.

⁵⁷⁷ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 65, and *Case of Forneron and daughter v. Argentina*, para. 48.

⁵⁷⁸ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 60, and *Case of Atala Rifo and daughters v. Chile. Merits, reparations and costs*, para. 108.

⁵⁷⁹ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, para. 61, and *Case of Furlán and family members v. Argentina*, para. 126.

complete information on the assistance given to the Peace Communities.⁵⁸⁰ Nevertheless, the Court has also observed that the persons who were at the displacement sites suffered, for at least three years, from different types of scarcities and violations of their right to integrity (in terms of conditions of hygiene, and access to health care and essential basic services, among other elements) (*supra* para. 118). The Court notes that this lack of attention is especially serious when those affected are persons in a situation of special vulnerability, such as children.

330. In the instant case, it has not been disputed that, as a result of the facts of the case, several hundreds of persons from the Cacarica River communities had to displace, among whom were children,⁵⁸¹ while others were born in conditions of displacement.⁵⁸² Consequently, the State is responsible for the violation of the rights of the child, because it failed to take sufficient positive measures in their favor in a context of greater vulnerability, in particular while they were far from their ancestral territories, a time during which they were affected by the lack of access to education and health care, by overcrowding, and a lack of adequate nutrition.

331. The Court considers that the State failed to comply with its obligation to provide special protection to the children affected by the incursions and the subsequent forced displacements, because it failed to comply with its special obligation to protect them in the context of a non-international armed conflict. Therefore, the Court concludes that the State is responsible for the violation of the rights to personal integrity of the displaced children, as well as of those who were born in a situation of displacement, recognized in Article 5 of the American Convention, in relation to Articles 1(1) and 19 of this instrument.

B.4. Other alleged violations

332. Regarding the obligation to guarantee rights without discrimination, the Court has established that Article 1(1) of the Convention is a general norm the content of which extends to all the treaty's provisions and establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever its origin or form, any treatment that could be considered discriminatory in relation to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it.⁵⁸³ States are obliged to adopt positive measures to reverse or modify any discriminatory situations that exist in their societies that affect a specific group of persons. This entails the special obligation of protection that the State must exercise with regard to actions and practices of third parties who, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.⁵⁸⁴

333. Furthermore, the Court reiterates that while Article 1(1) refers to the general obligation of the State to respect and ensure, "without any discrimination," the rights contained in the American Convention, Article 24 protects the right to "equal protection of the law."⁵⁸⁵ Thus, Article 24 of the American Convention prohibits legal or factual discrimination, not only with regard to the rights established in this treaty, but also with regard to all the laws enacted by the

⁵⁸⁰ Cf. Management Report of the Joint Verification Commission of March 2004 (evidence file, folios 4986 and ff.).

⁵⁸¹ See Annex II.

⁵⁸² See Annex III.

⁵⁸³ Cf. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*, para. 78; *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. 53 and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010 Series C No. 214, para. 268.

⁵⁸⁴ Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, para. 271, *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*, para. 80.

⁵⁸⁵ Cf. *Proposed amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84, paras. 53 and 54, *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, para. 174, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*, para. 82.

State and their application. In other words, if a State discriminates in the respect and guarantee of a Convention-based right, it would be failing to comply with the obligation established in Article 1(1) and the substantive right in question. If, to the contrary, the discrimination relates to an unequal protection of the domestic law or its application, the fact must be analyzed in light of Article 24 of the American Convention.⁵⁸⁶

334. In the instant case, the parties and the Commission have not presented arguments indicating which domestic laws, or their application, would be contrary to the American Convention. Therefore, the Court is unable to analyze the alleged violation of the right to equality and non-discrimination under Article 24 of the Convention, but only under Article 1(1) of the Convention in relation to Articles 11(2) and 17 thereof.

335. The Court notes that the representatives and the Commission have presented arguments on presumed discriminatory acts based on expressions or statements by members of the paramilitary units when the events occurred, which allegedly denoted racist stereotyping with regard to the ethnic origin and color of the skin of the Cacarica population. Similarly, they have indicated that, during these incursions and at the time of the voluntary confessions made before the special Justice and Peace jurisdiction, the paramilitaries identified both Marino López and other inhabitants of the Cacarica region as collaborators with the guerrilla.

336. In this regard, the Court notes, first, that no evidence was provided to prove that these statements were made by State agents or tolerated in the latter's presence. Nor do the arguments or the evidence in the case file reveal that public officials promoted versions of the events of the case in which members of the Afro-descendant communities of the Cacarica were considered collaborators and members of guerrilla groups. Furthermore, regarding the confessions made during domestic procedures, it is not for the Court to rule on the international responsibility of the State in relation to expressions used by the accused who have testified in exercise of their right of defense, or who are candidates to receive certain benefits under the special judicial proceedings.

337. Second, the Court notes that other allegations concerning the obligation to ensure rights without discrimination were also presented in relation to the absence of differentiated attention for the displaced owing to their condition of greater vulnerability. In this regard, the Court takes note that neither the Commission nor the representatives have presented specific arguments or information that would allow it to analyze these presumed violations in light of the provisions of the American Convention. In particular, they did not explain the specific actions that the State should have taken to comply with that obligation. Consequently, the Court has insufficient evidence to assess the State's alleged failure to comply with the said obligations.

338. Regarding the arguments of the representatives related to Articles 11(1) and 2 of the Convention, the Court will not rule in this regard, because it considers that the facts have been analyzed sufficiently, and the violations conceptualized under the right to personal integrity, to the protection of the family, and the measures of protection for children, under Articles 5, 17 and 19 of the American Convention, in relation to Article 1(1) of this instrument.

⁵⁸⁶ Cf. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*, para. 82.

IX.3.
**DISPOSSESSION AND EXPLOITATION OF THE TERRITORIES OF THE AFRO-
DESCENDANT COMMUNITIES OF THE CACARICA**
(Artículo 21 of the Convention)

A. Arguments of the Commission and of the parties

339. The Commission indicated that the communities displaced from the Cacarica river basin who had been victims of the ransacking and destruction of their villages and who were displaced were prevented “from enjoying their property, lands, and the resources of traditional use found there.” The Commission also argued that the Afro-descendant communities of the Cacarica “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 its collective dimension.” The Commission also considered that the right to property of the communities of the Cacarica river basin had been “affected due to the neglect and deterioration of their lands and both their moveable and immoveable, community and individual property,” and that the displacement impaired their ability to work, which resulted in loss of earnings. It also indicated that the right to property of the Afro-descendant communities was affected “during the time of the displacement because they had no access to 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 communities.”

340. The representatives added that the Afro-descendant communities of the Cacarica have “an almost umbilical relationship with the land, a vital relationship that can be perceived by the words they use, according to which the land is their mother and also their father, because they receive all its benefits,” and that, owing to Operation Genesis, “the victims in this case were arbitrarily deprived of the use and enjoyment of their property, in both its individual and communal dimension.” They also stated that the “displacement was accompanied by the ransacking and destruction of both individual and collective property.”⁵⁸⁷ Furthermore, they indicated that the violent incursion, the occupation and destruction of the spaces of their community and family life, of the places they lived in and planted, had profound effects on their way of life and survival, on their culture and ancestral identity, and as a result it “violated [...] the sphere of protection of Article 21” of the Convention.

341. Furthermore, they noted that “the territory from which they were displaced was exploited illegally by logging companies, while the territory was controlled by paramilitary groups that prevented the return of its ancestral inhabitants.” They indicated, in particular, that “these companies exploited the timber resources of the Cacarica area irrationally, by mechanical means, and this has had an extremely harmful effect on the land, the forestry resources, and the living conditions of the ethnic minorities who inhabit the areas that were logged [...]”; moreover, they accused the company MADARIEN of being the “direct beneficiary of different areas of the Colombian economy.” They added that “the illegal operations of the companies have caused severe environmental damage to the collective territory of which the victims in this case are the ancestral owners.”

342. Based on the above, the representatives considered that the State’s “responsibility had been constituted because it deliberately allowed the illegal exploitation of resources by private companies, which were supported by paramilitary groups, and had not taken effective measures to repair the environmental damage that this situation had caused and to guarantee that the said activities did not continue,” and “nor had it taken effective steps to stop companies from

⁵⁸⁷ Among this property, they indicated “the school, the health center, the women’s store, the meeting place, a football field, a power plant, an engine, working animals, and a collective vehicle [...]”.

carrying out projects in the territory of the Cacarica River basin that affect the use and enjoyment of the land and natural resources by the victims in this case.”⁵⁸⁸

343. The State indicated that it was not internationally responsible for the violation of the right to property of the inhabitants of the Cacarica River basin, because “there is no causal nexus between the violation of the right [...] to property and the action deployed by State agents,” and neither has there been an “omission that can be attributed to State agents.” Regarding the “company projects and environmental damage during the transitional period of the return to the territory” cited by the representatives, the State indicated that “these are situations that, on the one hand, occurred after the events of Operation Genesis and, on the other, are unconnected to those events.”

B. Considerations of the Court

344. Regarding the presumed violations of the right to property, the Court notes that the arguments of the parties and the Commission include allegations relating to two aspects: (1) the harm to the individual and collective property of the communities of the Cacarica River basin, and (2) the presumed illegal exploitation of the territories of the Community Council of the Communities of the Cacarica River basin.

B.1. The harm to the individual and collective property of the communities of the Cacarica River basin

345. The presumed victims are members of Afro-descendant communities that settled in the Cacarica river basin in a process of seeking land following the abolition of slavery in the mid-nineteenth century, at which time a migratory process commenced from the southern part of the Pacific region of Colombia to the southern part of Chocó, then to the Medio and Bajo Atrato. Thus, the Community Council of the Communities of the Cacarica River basin is composed of communities that have been located in the jurisdiction of the municipality of Riosucio, Chocó department, between the left bank of the Atrato River and the right bank of the Cacarica River (*supra* para. 86).

346. The Court recalls that, in the context of the right to property of members of indigenous peoples, Article 21 of the Convention protects the close ties that indigenous and other tribal peoples or communities, such as the Afro-descendants, have to their land, as well as to the natural resources of the ancestral territories and the incorporeal elements related to them.⁵⁸⁹ Due precisely to this intrinsic connection that the members of the indigenous and tribal peoples have to their territory, the protection of the right to the ownership, use and enjoyment of this territory is necessary to ensure their survival.⁵⁹⁰

347. As indicated (*supra* para. 131), in 1967, the Colombian State had already enacted a domestic law recognizing to the “black communities” the right to collective ownership of the

⁵⁸⁸ The representatives indicated that “the State has not disputed the fact that companies were illegally exploiting the territory while the victims were in a situation of forced displacement and that, owing to these illegal actions, the Constitutional Court issued a protection order (*amparo*) ordering the suspension of logging, and the Public Prosecution Service opened disciplinary proceedings against the local environmental authorities who had allowed the illegal exploitation of the territory.”

⁵⁸⁹ Cf. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary objections. Judgment of February 1, 2000. Series C No. 66*, para. 148, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245*, para. 145.

⁵⁹⁰ Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs. Judgment of June 17, 2005. Series C No. 125*, paras. 125, 124, 135 and 137, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 146.

territory they had occupied ancestrally.⁵⁹¹ Similarly, other subsequent laws recognized the right to collective ownership of these territories; for example, Law 70 of August 31, 1993, which recognized “to the black communities who have been occupying vacant land in the rural areas along the rivers of the Pacific Basin, in keeping with their traditional practices of production, the right to collective ownership.”⁵⁹² Thus, under the protection granted by both domestic and the international law, at the time covered by the factual framework of this case, the communities of the Cacarica River basin enjoyed special protection of their right to collective ownership. The State did not contest the ownership of these rights by the Community Council of the Cacarica River basin.

348. Also, these communities are settled in a region of significant geo-strategic importance in the armed conflict, in particular for the illegal armed groups, owing to its geographical location and its biological wealth, which favors the international trafficking of arms, chemical inputs, and illegal drugs, and it is also a strategic territory from a military perspective. The illegal armed groups have sought out this region as a corridor for their movements, for trafficking arms and narcotics, and encourage the logging of native species, in order to plant coca, oil palm and banana.

349. According to Rule 7 of Customary International Humanitarian Law, “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.”⁵⁹³ Also, Rule 133 stipulates that “[t]he property rights of displaced persons must be respected.”⁵⁹⁴ Principle 21.3 of the United Nations Guiding Principles on Forced Displacement indicates that “[p]roperty and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”⁵⁹⁵

350. The Court has also found in other cases that, owing to the circumstances in which the facts occurred and, especially, owing to the socio-economic situation and vulnerability of the presumed victims, the harm caused to their property may have a greater effect and scope that it would have had for other persons or groups in other conditions.⁵⁹⁶

351. Chapter IX-1 of this Judgment established the State’s responsibility for the paramilitary incursions in the Cacarica River basin. This Court also notes that the representatives and the

⁵⁹¹ Cf. Law 31 of July 19, 1967, approving ILO Convention 107 concerning the protection and integration of indigenous and tribal peoples in independent countries, adopted by the fortieth session of the General Conference of the International Labour Organization.

⁵⁹² Cf. Law 70 of 1993, Law 99 of 1993, and transitory article 55 of the 1991 Colombian Constitution (*supra* para. 131). Annex 1 of the National Council for Economic and Social Policy, CONPES 3169 of May 23, 2002, “Policy for the Afro-Colombian population,” indicates the municipalities that form the “Pacific Basin” and, in particular, includes the municipality of Riosucio, which encompasses the Cacarica River basin (evidence file, folio 45944).

⁵⁹³ *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 271. In addition, relevant rules of Customary International Humanitarian Law in this case are: “Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. Rule 9. Civilian objects are all objects that are not military objectives. Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives.” Henkaerts, Jean-Marie, Doswald Beck, Louise, *Customary International Humanitarian Law*, volume I, Rules, ICRC, Cambridge University Press, 2005, pp. 29 to 36.

⁵⁹⁴ *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 272.

⁵⁹⁵ United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, E/CN.4/1998/53/Add.2, 11 February 1998. Addendum: Guiding Principles on Internal Displacement.

⁵⁹⁶ Cf. *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, para. 204, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 273.

Commission indicated that both “individual”⁵⁹⁷ and “communal”⁵⁹⁸ property of the Cacarica communities had been harmed for two main reasons: (a) owing to the destruction⁵⁹⁹ and ransacking⁶⁰⁰ that took place during Operation “Cacarica,” and (b) owing to the damage produced by the lack of use, particularly of the communal lands.

352. The Court notes that the destruction of the homes of the inhabitants of the communities of the Cacarica River basin, in addition to constituting a major financial loss, resulted in the inhabitants losing their basic means of subsistence, which means that the violation of the right to property in this case was particularly serious. Thus, the Colombian Constitutional Court has established that “property should be considered a fundamental right, provided that it is related to the maintenance of material conditions of existence, and that disregarding it affects equality and the possibility of leading a decent life.”⁶⁰¹

353. Lastly, the Court notes that although the Commission and the representatives argued the violation of the right to private property owing to the destruction caused during the paramilitary incursions, as well as to the damage produced by the disuse of this property and the loss of use of it, “to the detriment of the members of the Afro-descendant communities of the Cacarica associated in CAVIDA and the women heads of household who live in Turbo,” it is also true that they did not individualize the victims or identify the property that had been seized from each of the displaced persons or communities. However, taking into account the specific circumstances of the case, the context in which the events occurred, and the fact that the State has not contested the legal considerations related to this violation of that right, the Court considers that the State is responsible for the acts related to the paramilitary incursions that caused or supported the violation of the right to collective property contain in Article 21 of the Convention, to the detriment of the members of the displaced communities of the Cacarica.⁶⁰²

⁵⁹⁷ The representatives indicated that the Afro-Colombian victims in this case were owners of material goods represented by: (a) Houses: the family home, generally made of wood with a zinc roof, and another where, among other elements, instruments for planting and work tools were kept”; (b) the homes had beds, mattresses, radio, tables and chairs, clothes, bed linen and netting to avoid mosquitos at night, cooking utensils, including pots and pans, dishes, buckets, glasses, cutlery, grinder, pestle and mortar, pressure cooker”; (c) “Boat: wooden dug-out made by people in the community for mobilization by river, to transport crops and to exchange products with other communities”; (d) “Crops: rice, corn, plantain, cacao, fruit trees, such as mango, coco palm, palmheart, avocado pear, lime, orange, zapote, pineapple, mandarine orange (each family group had these trees)”; (e) “Work tools such as machetes, rake, spade, hoe, hammer, axe, chain saw and saw,” and (f) “Domestic animals that they used for their daily work and for their subsistence, such as hens, pigs, dogs, cats, working animals, ducks, turkeys, horses, and others.”

⁵⁹⁸ Among this property, the representatives indicated that the most important were: (a) the school; (b) the health center; (c) the women’s store; (d) the meeting place; (e) the football pitch; (f) the power plant; (g) the working animals, and (h) a collective vehicle.

⁵⁹⁹ As observed in the Chapter on facts, the paramilitary units launched grenades at the roofs of the houses. Cf. Indictment in the hearing on the partial indictment of Diego Luis Hinestroza Moreno, Medellin Justice and Peace Courts, May 30, 2008 (minutes 23:43 to 24:15) (evidence file, folio 1472). See also: Testimony of Luis Aristarco Hinestroza (step-brother of Marino Lopez) of April 13, 2007, before the National Human Rights Unit (evidence file, folio 17338), and Testimony of J.V.R. on March 3, 2007, before the National Human Rights Unit in proceeding No. 2332 (evidence file, folio 17333).

⁶⁰⁰ As observed in the Chapter on Facts, the paramilitary units ransacked the homes of the inhabitants of Cacarica. Cf. Sworn statement for non-trial purposes No. 8522 of April 3, 2009, of witness Bernardo Vivas Mosquera before the 76th Notary’s Office (evidence file, folio 1541). See also: Preliminary arguments presented before the Prosecutor General in proceedings 5767, by L.J.M., legal representative of Father J.G., requesting the indictment of Rito Alejo del Río Rojas for crimes against humanity (evidence file, folio 1286). William Manuel Soto Salcedo, Minute by minute of the Collective voluntary confessions of the candidates of the Elmer Cárdenas Bloc concerning Operation Genesis – Cacarica, Medellín, April 29, 2010 (evidence file, folio 19179).

⁶⁰¹ Cf. Colombian Constitutional Court. Judgment No. T-506/92 of August 21, 1992; judgment cited in the Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs, para. 181.

⁶⁰² The determination of the injured party will be made in Chapter X on reparations.

B.2. The illegal exploitation of the territories of the Community Council of the Communities of the Cacarica River basin

354. The ties between the territory and the natural resources traditionally used by the indigenous and tribal peoples, and that are necessary for their physical and cultural survival as well as the development and continuity of their world vision, are protected by Article 21 of the Convention. This is to ensure that they are able to continue living their traditional way of life and that their distinctive cultural identity, social structure, economic system, customs, beliefs and traditions will be respected, ensured and protected by the States.⁶⁰³ Lack of access to the territories may prevent indigenous communities from using and enjoying the natural resources required to provide their subsistence through their traditional activities,⁶⁰⁴ and to practice their traditional health care systems, and other socio-cultural functions. This may expose them to precarious and inhuman living conditions, to greater vulnerability to diseases and epidemics, and subject them to situations of extreme lack of protection.⁶⁰⁵

355. In this case, the Court notes that the logging activities ignored the Law concerning the black communities and its regulatory decree that governs the participation of the communities in the design, coordination and execution of the plans, programs and projects for economic development on their territories, as well as the role of the black authorities in the administration and management of their territories. In this regard, the Ombudsman's Office has indicated that neither "CODECHOCÓ nor the logging companies implemented mechanisms to ensure the right to participation of the Community Council, through its management and administration organs."⁶⁰⁶ Also, CODECHOCÓ granted logging permits to lower community councils that form part of the Cacarica High Council, thus causing internal divisions among them, and weakening and fragmenting community development management.⁶⁰⁷ In this regard, the actions of CODECHOCÓ have been insufficient to avoid the violation of the different rights mentioned above, because CODECHOCÓ, as an environmental authority, has not used its policing function effectively to deal with the illegal exploitation.⁶⁰⁸

356. Based on all the above, the Court finds that the exploitation of the collective property of the communities of the Cacarica River basin was carried out illegally; furthermore, there is evidence that the authorities failed to protect the right to collective property even though they were aware, because of several on-site visits, of the illegal exploitation that was underway. In this regard, the domestic administrative or judicial remedies were not effective to rectify this situation.

357. The Court notes that neither the representatives nor the Commission referred in their arguments to which safeguard measures that protect the right to collective property had been violated by the State. Consequently, the Court is unable to rule in this regard, without prejudice to considering that the violation of the right to collective property contained in Article 21 of the

⁶⁰³ Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay*, paras. 124, 135 and 137, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 146.

⁶⁰⁴ Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 164, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 147.

⁶⁰⁵ Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*, para. 73.61 to 73.74, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 147.

⁶⁰⁶ Cf. Ombudsman's Office, *Amicus curie* presented before the Constitutional Court, "Forestry exploitation and human rights in the Cacarica River basin in the department of Chocó" (evidence file, folios 46539).

⁶⁰⁷ Also, there were agreement between Madarién and the Lower Councils without the existence of a prior favorable opinion by the Assembly or the Board of the Community Council in relation to the signature of commitments between the Lower Councils and the logging companies. These agreements were accepted by CODECHOCÓ. Cf. Ombudsman's Office, *Amicus curie* presented before the Constitutional Court, "Forestry exploitation and human rights in the Cacarica River basin in the department of Chocó" (evidence file, folios 46563).

⁶⁰⁸ Cf. Ombudsman's Office, *Amicus curie* presented before the Constitutional Court, "Forestry exploitation and human rights in the Cacarica River basin in the department of Chocó" (evidence file, folios 46522 and ff.).

Convention, has been proved sufficiently, because the exploitation activities were illegal, as recognized by the organs of the domestic jurisdiction (*supra* para. 143).

358. Consequently, the Court concludes that the State is responsible for the violation of the right to collective property contained in Article 21 of the Convention, in relation to Article 1(1) of this instrument, of the members of the Community Council of the communities of the Cacarica river basin.

IX.4 CRIMINAL INVESTIGATIONS AND PROCEEDINGS AND OTHER PROCEDURES (Articles 8 and 25 of the Convention)

A. Arguments of the Commission and of the parties

359. The Commission and the representatives considered that the State had violated the right to judicial guarantees and judicial protection established in Articles 8 and 25, in relation to Article 1(1) of the American Convention, and that, in particular, it had failed to comply with the obligations to investigate, prosecute and punish those responsible for torturing Marino López, pursuant to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Marino López. The representatives also argued that the normative framework of the demobilization proceedings, which grants legal benefits to the members of the paramilitary groups who demobilize, impairs the right to justice of the victims and, thus, the obligation to adopt domestic legal provisions established in Articles 1(1) and 2 of the Convention.

360. The Commission observed that, more than 14 years after the events occurred, one investigation is still at the preliminary stage, and that neither the criminal proceeding nor the investigations of the ordinary justice system⁶⁰⁹ nor the one under the Justice and Peace Law,⁶¹⁰ have produced any result as regards administering justice and providing reparation, because no judgments have been delivered convicting those who have confessed to having taken part in the events that are the subject of this case. It also considered that, even though at least 38 members of the Army participated in Operation Genesis and numerous members of paramilitary groups had taken part in the incursions in the Cacarica river basin, of these, only one Army General and one soldier and some members of paramilitary groups had been prosecuted.

361. Furthermore, the Commission argued that the judicial proceedings have been drawn out, so that the reasonable time frame established in the Convention has been exceeded, and the responsibility for this can be attributed to the judicial authorities. According to the Commission, in the present case, the delay has reduced the possibility of uncovering the truth of the events and of prosecuting the perpetrators. The Commission also referred to the inefficiencies in the investigations owing to the failure to protect participants in the proceedings.⁶¹¹ Regarding the

⁶⁰⁹ In this regard, it indicated that the proceedings under the ordinary criminal justice system have not progressed significantly, because, one of them was precluded by the State for more than four years and re-opened in 2009 without any results to date (proceeding No. 5767, now 426), and the second did not make any progress until just last year when a first instance judgment was delivered sentencing former General Rito Alejo del Río to 26 years' imprisonment (proceeding No. 2332). It indicated that this judgment was delivered only for the death of Marino López Mena and is not yet final. It also indicated that an ordinary criminal investigation into the paramilitary incursion into the village of Bijao had been opened, but no investigations had been initiated in this jurisdiction for the other paramilitary incursions that are the subject of this case. Everything related to the remaining incursions was being aired before the legal proceedings of the Justice and Peace procedure, but only with regard to the events described in the voluntary confessions that are received.

⁶¹⁰ Regarding this jurisdiction, the Commission noted that the State had not delivered judgments convicting anyone. However, a paramilitary leader who had provided information that was important for the clarification of the facts and the punishment of those responsible had been extradited.

⁶¹¹ In this regard, it indicated that, in order to protect the physical integrity of the officials of the Human Rights Unit and the members of the Technical Investigation Corps who took part in this investigation, and to avoid reprisals

disciplinary proceedings opened owing to the facts of this case, the Commission pointed out that none of them has led to any real results; that some of them are still at the preliminary stages, and that others have prescribed. Lastly, it indicated that the extradition to the United States of America of individuals who had testified under the Justice and Peace Law constitutes an obstacle to resolving the impunity of the events.⁶¹²

362. The representatives added that the State had failed to comply with its obligation to investigate and punish, impartially and diligently and within a reasonable time, all those responsible for the events of this case and, consequently, “has failed to comply with its obligation to ensure the victims the right to the truth and the right to justice.” They also indicated that the domestic judicial proceedings were characterized by a lack of due diligences manifested by the absence of a comprehensive investigation of the facts. They indicated that, as a result of this, after nearly 15 years had elapsed, the events of this case remain in impunity.⁶¹³

363. Regarding the additional shortcomings in the investigation into the paramilitaries presumably involved in the events, the representatives charged that there had been obstructions *de facto* and *de jure* as a result of the demobilization procedure. In addition, they argued that the legal framework of the demobilization procedure, which granted legal benefits to the members of the paramilitary groups who demobilized, also affected the victims' right to justice.

364. Lastly, the representatives indicated that the protection ruling T-955/03 handed down by the Constitutional Court ordering the suspension of logging, and some disciplinary procedures opened by the Public Prosecution Service against local environmental authorities had not guaranteed “the effective enjoyment of the right to collective property and the natural resources, in the terms in which these rights are recognized in the case law of the Inter-American Court.” They added that the State had “not taken effective measures to repair the environmental damage that this situation has generated and to ensure that the said activities do not continue.”

against them for the actions undertaken in legitimate exercise of their functions, precautionary measures were granted after which the pressure and threats suffered by these officials at the investigation stage of proceeding No. 5767 were monitored. It added that the former soldier, O.J.G.Y. requested protection for himself and his family in order to continue testifying in the criminal proceeding and in a disciplinary proceeding owing to the threats he had received, but this was not provided, causing him to retract his previous statements. All of this, in the Commission's opinion “constituted an obstruction to the progress of the investigation and non-compliance with the search for the truth and the punishment of those responsible.”

⁶¹² In this regard, the Commission recalled its considerations that “the extradition of a demobilized individual so that he can respond in another country for offenses that are less serious than the ones he is confessing before the Colombian judges is a form of impunity.”

⁶¹³ In order to substantiate this, the representatives analyzed actions of the Colombian authorities: (a) the lack of due diligence and the unjustified delay in the proceeding before the ordinary justice system; (b) the irregularities and obstructions of justice in the ordinary criminal proceeding; (c) the logical lines of investigation that were not explored; (d) the additional deficiencies of the investigation into the paramilitaries involved in the events, and (e) the ineffectiveness of the disciplinary proceedings and the failure to investigate the illegal exploitation on the territory. Regarding the first point, they noted that the State had not conducted an effective investigation into the offense of forced displacement, even though this offense – which previously corresponded to illegal constraint described in article 276 of Decree 100 of 1890 – had been criminalized autonomously since 2000. Similarly, they indicated that, in the proceeding opened under file No. 2332, the crime of Marino López was investigated in isolation, without considering its nature as a crime against humanity. They indicated that the displacement, the paramilitary incursion, and the violations of international humanitarian law committed by State agents during “Operation Genesis” had been excluded from this investigation. Regarding the second point, they indicated that the conduct of the different investigations had been characterized by the absence of guarantees for the victims and witnesses to be able to appear before the authorities and testify to the facts without being harassed, accused and, subsequently, victims of spurious judicial charges. On the third point, the representatives indicated as the main factor of impunity the refusal of the judicial authorities to investigate these events systematically. They indicated that the crimes of which the Cacarcia communities were the victims responded to a complex structure of criminal collusion that included soldiers, politicians and leaders of the paramilitary groups and their henchmen. Lastly, the representatives indicated that the paramilitary participation in the murder had not been investigated adequately, or the connections between the soldiers and the paramilitaries involved.

365. In Chapter IV of this Judgment the Court established that the State had acknowledged its international responsibility for the violation of Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of “the next of kin of Marino López Mena, who were duly identified and individualized, as well as of the victims of forced displacement determined by the Court,” owing to the violation of a reasonable time, without it having been possible, to date, to identify and punish the masterminds and perpetrators of the said offenses. The dispute remained with regard to the State’s responsibility for the alleged violation of the other rights that the representatives and the Commission alleged had been violated (*supra* para. 22).

366. Despite the foregoing, the State indicated that the reasonable time for an investigation cannot be examined in abstract, but rather case by case, and indicated that, although the criminal investigations had been conducted diligently and responsibly, no results had been obtained because of the complexity of the events under investigation, owing to the *modus operandi* of the illegal organizations that instigated the events, the vulnerable conditions of the population that was the victim of those events, and the difficulty for the judicial officials to access the area where the events occurred.

367. In addition, in its brief of August 13, 2013, with observations on the evidence forwarded by the Prosecutor General’s Office, the State indicated, *inter alia*, that “the documentation provided by the Prosecutor General’s Office reveals the significant efforts and progress made in the administration of justice, as well as Colombia’s commitment to seek the truth in this case,” and that the State “has been evaluating the functioning of the system of criminal investigation in Colombia [...] in order to better combat organized crime; to obtain a better knowledge of the context of the armed conflict in Colombia, so as to improve the approach to transitional justice procedures; to respond to the demands of civil society and, in general, to make the administration of justice more effective.” It stressed that, as a result of the above, it had recently created the National Analysis and Context Unit as an “instrument of criminal policy focused on dealing mainly with phenomena of organized crime, by using tools to analyze crimes and create contexts, in order to coordinate the isolated information that is currently in different units of the Prosecution Service.”⁶¹⁴

B. Considerations of the Court

368. As considered in this Judgment (*supra* Chapter IV), the State’s partial acknowledgement of responsibility in relation to the alleged violations of the rights recognized in Articles 8 and 25 of the Convention makes a positive contribution to the evolution of these proceedings, to the application of the principles that inspire the American Convention, and to the conduct that States are obliged to assume in this area. However, this acknowledgement must be related to the nature and severity of the alleged violations, the demands and interest of justice, the particular circumstances of the specific case, and whether it will allow the truth of what happened to be determined.⁶¹⁵

369. In this chapter, and owing to the subsisting dispute (*supra* para. 22), the Court will now decide whether the State has incurred in violations of the rights established in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument and, to this end, it will examine the different domestic investigations and criminal proceedings that were opened based on the events of this case.

⁶¹⁴ The State also indicated that this Unit has been organized in nine groups so that each one works on logical lines of investigation that respond to the country’s different problems. It also indicated that one of these groups has been called “Investigation group on the violence that occurred in the Urabá region.”

⁶¹⁵ Cf. *Case of Manuel Cepeda Vargas v. Colombia*, para. 17, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 151.

B.1. Considerations on due diligence and logical lines of investigation

370. The Court has established that the obligation to ensure the rights contained in the Convention (Article 1(1)) includes the legal obligation “to prevent, reasonably, human rights violations, and to investigate, thoroughly and with the means available, any violations that have been committed within the sphere of its jurisdiction in order to identify those responsible, impose the pertinent sanctions [on them], and make adequate reparation to the victim.” The most important point is to clarify “whether a specific violation [...] has occurred with the support or the tolerance of the public authorities or whether the latter have acted so that the violation has been committed despite any prevention, or with impunity.”⁶¹⁶ The obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of this type of event.⁶¹⁷

371. Although the Court has indicated that the obligation to investigate is one of means, rather than of results, this does not mean that the investigation can be undertaken as “a simple formality preordained to be ineffective,” or as a mere action by private interests, which depends on the procedural initiative of the victims or their next of kin, or on the provision of probative elements by private individuals.⁶¹⁸ It is the responsibility of the State authorities to conduct a diligent, impartial and effective investigation, using all available legal means, aimed at discovering the truth and the eventual prosecution of the authors of the acts and their punishment, as appropriate, especially in a case such as this in which State agents are involved.⁶¹⁹

372. As regards the obligation to investigate with due diligence, this Court has indicated that the organ investigating an alleged human rights violation must use all available means to carry out, within a reasonable time, all those actions and inquiries that are necessary in order to try and obtain the desired result.⁶²⁰ This obligation of due diligence acquires particular intensity and importance in relation to the severity of the crimes committed⁶²¹ and the nature of the rights harmed.⁶²² In this regard, all “necessary measures [must be taken] to envision the systematic patterns that allowed the perpetration of gross human rights violations.”⁶²³

373. The Court understands that due diligence in the proceedings based on the events of this case required them to be conducted taking into account, among other elements, the complexity of the events, the context in which they occurred, and the patterns that explain their perpetration, avoiding omissions in the gathering of evidence and in following up on logical lines of investigation.⁶²⁴ Thus, the analysis of these circumstances is made based on: (a) the criminal

⁶¹⁶ *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 173, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 47.

⁶¹⁷ *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 319, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 156.

⁶¹⁸ *Cf. Case of Velásquez Rodríguez, Merits*, para. 177, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*, para. 248.

⁶¹⁹ *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits*, para. 143, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 157.

⁶²⁰ *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 80, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 220.

⁶²¹ *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 156, and *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, para. 230.

⁶²² *Cf. Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, para. 230, and *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 157.

⁶²³ *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 156.

⁶²⁴ *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 158, and *Case of the Río Negro Massacres v. Guatemala*, para. 194.

proceedings against Rito Alejo del Río Rojas and other members of the Armed Forces; (b) the investigations conducted against other members of the Armed Forces; (c) the proceedings undertaken against the paramilitaries, and (d) the disciplinary proceedings.

a) The criminal proceedings undertaken against Rito Alejo del Río Rojas

374. Two proceedings were opened under the domestic criminal jurisdiction (National Human Rights and International Humanitarian Law Unit (UNDH-DIH)) for the events that are the subject of this case that date from 1997, in other words the year in which Operation Genesis was executed. According to the proceedings that were conducted, one of them refers to the presumed collaboration of retired General Rito Alejo del Río Rojas with paramilitary groups in 1996 and 1997, while he was commander of the 17th Brigade (case file 426), and the other relates to the incursion in the village of Bijao by paramilitary units, the “murder of a protected person” Marino López Mena, the forced displacement of February 1997, and the offense of conspiracy to commit a crime (case file 2332). According to the representatives and the Commission, these proceedings were not conducted with due diligence owing to: (a) the lack of security for those who took part in the proceeding; (b) the victims lack of participation in the proceedings; (c) the failure to implicate the private companies in the presumed harm to the rights of the victims; (d) the fact that the offense of forced disappearance had not been defined as an autonomous crime; (e) the fact that the crime against Marino López was investigated in isolation without considering its nature as a crime against humanity; (f) the fact that the prosecution refused to investigate the presumed pressure that resulted in the retractions by the former soldier Oswaldo Giraldo Yepes; (g) the fact that the prosecution failed to investigate the murder of the former Apartadó town counselor, José de Jesus Guzmán, killed while he was waiting to testify in these proceedings, and (h) the fact that there were logical lines of investigation that were not explored, because the extrajudicial execution of Marino López has not been investigated systematically, taking into account that the forced displacement of the Cacarica communities was made possible owing to the implementation of a plan conceived at the highest level.

375. Regarding the alleged situation of insecurity of the participants in the proceedings,⁶²⁵ the Court points out that no specific evidence was provided in this regard. The Court notes that although the Commission indicated that, on August 9, 2001, it had granted precautionary measures in favor of the former head of the Human Rights Unit of the Prosecutor General's Office and the head of the Anti-corruption Unit, as well as several prosecutors attached to the National Human Rights and International Humanitarian Law Unit, and some members of the Technical Investigation Corps,⁶²⁶ in these proceedings it has not been explained whether the measures of protection for these officials are related to investigation and prosecution activities related to the facts of this case.

376. Nevertheless, it should be reiterated that this Court has indicated in other cases that, in order to ensure due process of law, States must provide all necessary means to protect agents of justice, investigators, witnesses, and next of kin of victims from harassment and threats aimed at obstructing the proceedings and avoiding the elucidation of the facts, and concealing the perpetrators,⁶²⁷ because, to the contrary, this would have an intimidating effect on those who could be witnesses, seriously impairing the effectiveness of the investigation.⁶²⁸

⁶²⁵ Reference was made, in particular, to the retraction of some deponents; for example, O.J.G.Y.

⁶²⁶ Cf. Inter-American Commission, precautionary measures MC 185-01. Pedro Díaz Romero *et al.* (evidence file, folio 1882). See also: IACHR, Annual Report 2001, III C. 1, para. 20 (evidence file, folio 1983).

⁶²⁷ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No101, para. 199, and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 171.

⁶²⁸ Cf. *Case of Kawas Fernández vs. Honduras. Merits, reparations and costs*, para. 106.

377. Regarding the retraction of the testimony of Oswaldo Giraldo Yepes, cited as an example of the lack of security, the Court notes that the Prosecutor General's Office had assessed his testimony and concluded that it was "false [...] the initial version of the witness given in his first statements," that it "has no credibility," and that his statements contain contradictions and "completely improbable facts." In addition, the Prosecutor General's Office indicated that the deponent "has unusual evocative powers, he mentions names, aliases, and connections of members of the said group (paramilitaries), reporting on facts regarding which there is no explanation how he knew about them and about which he provides unusually detailed accounts; [...] that his account does not appear spontaneous, but rather mechanical and automatic, as if he was unable to perceive the facts, but rather had memorized the information in order to narrate it." Lastly, the Prosecution noted that "Oswaldo Yepes was affected by the murder of his brother and by his complex judicial problems," concluding that "[i]n these conditions of extreme psychological pressure and risk, experience indicates that an individual will seek, at all costs, any means of protection, under such a convincing excuse as making accusations against high-ranking persons."⁶²⁹

378. In relation to the victims' lack of participation in the proceedings, the Commission did not elaborate on its allegations with more information or analysis. Nor did it explain how this alleged lack of participation affected the due diligence in the investigation in this case. As regards the absence of the hypothesis of the participation of the private companies in the harm to the rights of the victims in this case, the Court notes that it has insufficient evidence to allow it to conclude that private companies could have been implicated in the facts of this case, and that there had been negligence in investigating this supposed participation. In any case, it is for the competent domestic authorities to continue investigating whether this hypothesis is relevant to the facts of the case and, if so, to take the corresponding decisions.

379. Regarding the fact that General del Río was not accused of the offense of forced displacement autonomously in this case, the Court notes, first, that on August 23, 2012, General del Río was sentenced in first instance to 312 months' imprisonment and loss of civil rights for 10 years, based on the death of Marino López. Therefore, regardless of the *nomen iuris* of the crimes he was accused of, the facts did not remain uninvestigated or prosecuted and punished. In this regard, it is for the domestic authorities to decide whether it is in order to accuse him of other crimes, based on the severity and circumstances of the events.

380. With regard to the murder of the former Apartadó town counselor, the Court has been provided with insufficient evidence to allow it to affirm that the said act is related to the events of this case or that it denotes a lack of due diligence in the investigations or in the judicial proceedings related to this case.

381. Lastly, regarding the arguments concerning the logical lines of investigation and the supposed "isolated" investigation of the murder of Marino López Mena, the Court notes that the judgment of the Eighth Criminal Court of the Bogota Special Circuit of August 23, 2012, indicated that "the death of López Mena was one of the acts carried out on the occasion of the implementation of the so-called Operation Genesis, designed and executed by Rito Alejo del Río Rojas who, at that time, was commander of the 17th Brigade, [and] that the said military operation was carried out with the support of the self-defense groups that were operating in the region."⁶³⁰ The same judgment indicated that the prosecution proposed the hypothesis that "the death of Marino López Mena [had been] a means to attain other objectives; in other words, a joint plan between the Army and the paramilitaries to cause terror among the population," adding that the "Army and the self-defense groups had divided up the area and undertook violent attacks on the civilian population in order to displace them and take possession of that territory." Similarly, the representative of the Public Prosecution Service who acted in the

⁶²⁹ The Prosecutor General's Office, case file 426, volume 9 (evidence file, folios 41561, 41563 and 41564).

⁶³⁰ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14791 and 14792).

proceedings in which Rito Alejo del Río Rojas was the accused, indicated that “the said homicide cannot be seen as an isolated act, but was an instrument towards a specific goal.”⁶³¹

382. Consequently, as can be seen from the rulings of the different State authorities who were part of the investigation and the proceedings, and from the analysis of the probative elements, indications and circumstantial evidence taken into account by the Eighth Court in order to issue a legal ruling, it is not possible to conclude that the State considered the murder of Marino López to be an “isolated act.” To the contrary, the lines of investigation followed by the prosecution indicate that the criminal prosecution was focused, precisely, on determining whether this murder took place within the framework of actions designed to generate forced displacements, in the context of collaboration between paramilitary groups and high-ranking members of the Army present in the region. Consequently, the allegation of the representatives and the Commission that the State failed to investigate the murder of Marino López and the forced displacement taking into account the complex structure of persons involved in the planning and execution of the crime does not appear to be proved. It will be for the domestic authorities, naturally, to decide whether there are other levels of participation in the events and, in that case, to continue the investigations and try those responsible.

383. Furthermore, regardless of the duration of the two proceedings, a matter that will be analyzed in the following section, the Court notes that the investigations carried out by the different prosecutors who intervened in both proceedings never ceased, despite the difficulties that existed in the region at that time in Colombia. However, the Court could verify that there are three main reasons why, to date, no judgment has been delivered in proceeding No. 426. First, as emerges from the proven facts (*supra* paras. 145 and *ff.*), there were numerous disputes on competence among the prosecutors who intervened in the case.⁶³² Second, the proceeding was suspended for five years because, on March 9, 2004, the Prosecutor General decided that the investigation was precluded,⁶³³ and the case was only re-opened recently on March 11, 2009, by the Criminal Cassation Chamber of the Supreme Court of Justice,⁶³⁴ because new facts and evidence had emerged. A third factor that has contributed to the failure to decide this proceeding is the refusal of the accused, Alejo del Río, to expand his preliminary statement in a hearing, which was suspended three times for this reason.⁶³⁵

384. In relation to proceeding No. 2332, the Court has been able to verify that, since the 15th Prosecutor of Riosucio was assigned to intervene in 2003, the investigation activities have never

⁶³¹ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folio 14800).

⁶³² This situation was described in detail in the chapter on Proven Facts of this Judgment, and numerous documents provide evidence of the different disputes on competence that arose throughout this proceeding. Cf. Among others, *Habeas corpus* decision of the 31st Criminal Court of the Bogota Circuit of August 4, 2001, case file No. 0004/2001 (evidence file, folio 1969); decision of the Prosecutor General of January 18, 2010, in case file No. 426, original volume No. 20 (evidence file, folio 43746); Report of the Secretariat of April 12, 2010, on the decision of the Plenary Chamber of the Supreme Court of Justice in ordinary session of March 18, 2010, in case file No. 426, original volume No. 20 (evidence file, folio 43771); decision of the Prosecutor General of June 17, 2010, in case file No. 426, original volume No. 20 (evidence file, folio 43788); decision of the 20th Special Prosecutor UNDH-DIH of July 8, 2010, in case file No. 426, original volume No. 20 (evidence file, folio 43808); decision of the 20th Special Prosecutor UNDH-DIH of May 18, 2011, in case file No. 426, original volume No. 20 (evidence file, folio 44091).

⁶³³ Cf. Decision of the Prosecutor General of March 9, 2004, in case file 426, original volume No. 11 (evidence file, folio 42334).

⁶³⁴ Cf. Supreme Court of Justice, Criminal Cassation Chamber. Judgment on appeal for review (Proceeding 30510) of March 11, 2009 (evidence file, folio 2143).

⁶³⁵ General del Río's defense counsel pleaded the incompetence of the UNDH-DIH special prosecutors to hear the case, in all the hearings scheduled for him to expand his preliminary statement. Cf. Preliminary statement made by Rito Alejo del Río Rojas before the UNDH-DIH 20th Special Prosecutor on July 2, 2009 (evidence file, folio 42500); Hearing on expansion of the preliminary statement made by Rito Alejo del Río Rojas before the UNDH-DIH 20th Special Prosecutor (evidence file, folios 42515 and 42516); Hearing on expansion of the preliminary statement made by Rito Alejo del Río Rojas, on April 15, 2011, before the UNDH-DIH (evidence file, folio 43985).

been interrupted.⁶³⁶ Following this, the case file contains numerous statements made by paramilitaries implicated in the case that endorse the line of investigation followed concerning the connection between General del Río and members of paramilitary groups, as those responsible for the events investigated.⁶³⁷ In most cases, the statements consist in voluntary confessions that were transferred from the Justice and Peace procedure as evidence.⁶³⁸

385. Based on the foregoing, the Court finds that no evidence or arguments have been provided that allow it to determine that the State has violated the obligation to investigate with due diligence and to prosecute and punish, as appropriate, in the proceedings relating to Rito Alejo del Río Rojas.

b) Investigations undertaken against other members of the Armed Forces

386. The Court notes that incomplete information has been provided on investigations and/or proceedings related to members of the Armed Forces other than Rito Alejo del Río Rojas. In this regard, it should be repeated that, in this case, the Court has considered it proved that collaboration existed between paramilitary units and members of the Armed Forces in the execution of the Operations Cacarica and Genesis, so that it is surprising that no other member of either of these groups has been accused in the two proceedings.

387. Consequently, the Court finds that the State has not complied with its obligation to investigate with due diligence the other members of the Armed Forces who could have participated in and be held responsible for the events.

c) Investigations of members of paramilitary groups

388. According to the representatives and the Commission, the investigations and the proceedings did not comply with the requirement of due diligence for the following reasons: (a) the lack of security for those who took part in the proceedings; (b) the victims lack of participation in the proceedings; (c) the failure to implicate the private companies in the investigations into the facts of the case; (d) the fact that logical lines of investigation were not explored, because the extrajudicial execution of Marino López was not investigated systematically taking into account that the forced displacement of the Cacarica communities was made possible by the implementation of a concerted plan prepared at the highest level; (e) the effects of the extraditions to the United States of America of persons who are subject to proceedings in Colombia under the Justice and Peace Law; (f) no investigations have been opened in the ordinary criminal jurisdiction into the paramilitary incursions in the Cacarica river basin; (g) only five paramilitaries have been implicated in the events of the case (even though the evidence indicates that there were ten); (h) regarding the voluntary confessions under the Justice and Peace procedures, “even though [...] they have revealed some elements that

⁶³⁶ Cf. Decision No. 0105 of July 9, 2003. Regional Director of Prosecutors, Quibdó (evidence file, folio 9879).

⁶³⁷ Cf. Statement made by Luis Muentes Mendoza on August 29, 2008, in case file No. 2332 (evidence file, folio 17386); Statement made by Diego Luis Hinestroza Moreno on August 29, 2008, in case file No. 2332 (evidence file, folio 17697); Preliminary statement made by William Soto Salcedo on December 5, 2011, in case file No. 2332 (evidence file, folio 17697), and Expansion of statement made by Diego Luis Hinestroza Moreno on January 18, 2011, in case file No. 2332 (evidence file, folio 17708).

⁶³⁸ Cf. Voluntary confessions referring to the case of Marino López Mena: Fredy Rendón Herrera on October 24, 2007 (evidence file, folio 17247), Diego Luis Hinestroza Moreno on April 2, 2008 (evidence file, folio 17164), Luis Muentes Mendoza on April 22, 2008 (evidence file, folio 17165) and on December 1, 2008 (evidence file, folios 17167 and 17252), Alberto García Sevilla on August 28, 2008 (evidence file, folio 1766), Rubén Darío Rendón Blanquiceth on July 17, 2008 (evidence file, folio 17169), Franklin Hernandez Seguro on August 6, 2008 (evidence file, folio 17171), and William Manuel Soto Salcedo on July 9, 2008 (evidence file, folio 17167); Combined confessions, Operation Cacarica (Genesis) on April 28, 29 and 30, 2010, of the candidates Fredy Rendón Herrera, William Manuel Soto Salcedo, Diego Luis Hinestroza Moreno, Luis Muentes Mendoza, Franklin Hernandez Seguro, Alberto García Sevilla and Julio César Arce Graciano (evidence file, folios 17870 to 17932 and 17935); Statements by the former AC Élmer Cárdenas Bloc, in relation to the so-called “Operation Cacarica (Genesis)” (evidence file, folios 18372 to 18398).

contribute to the truth, this has been fragmentary and, in general, incomplete”; (i) the fact that the prosecution has not diligently gathered probative elements other than what has been said by the candidates in the voluntary confession proceedings in order to establish the veracity of their statements and, in general, (j) the events of this case have not been investigated in an effective, extensive and systematic manner.

389. The Court reiterates the considerations made in section B.1.a) above concerning the aspects related to: the lack of security for those who took part in the proceedings; the victims’ lack of participation in the proceedings, and the failure to implicate the private companies in the investigations into the facts of the case. Regarding the logical lines of investigation, the evidence provided reveals that the Prosecutor General’s Office has examined the facts of the case in the context of the patterns of action of the paramilitaries who were operating in the region⁶³⁹ and that, as has been shown in this case, they operated with the collaboration and acquiescence of the Armed Forces.

390. Regarding the extradition of paramilitaries to the United States of America, in the case of *Cepeda Vargas v. Colombia*⁶⁴⁰ and in the order on compliance with judgment in the case of *the Mapiripán Massacre v. Colombia*,⁶⁴¹ the Court has considered that “the application of devices such as extradition should not serve as a mechanism to encourage, obtain or ensure impunity. Consequently, in decisions relating to the application of these procedural devices to an individual, the State authorities must give prevalence to considering an accusation for gross human rights violations.” This has also been considered by the Criminal Cassation Chamber of the Colombian Supreme Court of Justice in relation to a request to extradite a paramilitary.⁶⁴²

391. Despite the foregoing, the representatives have not explained how, in this specific case, or for what reasons, the extradition of paramilitaries had an impact on the victims’ right to truth and to justice. To the contrary, the evidence provided by the parties reveals that the Prosecutor General, and also the Eighth Criminal Court of the Bogota Special Circuit reached conclusions on the judicial truth of the facts of the case that, incidentally, are essentially in keeping with what the representatives have alleged in their briefs. This acquires greater relevance when it is considered that the judgment delivered by the Eighth Criminal Court of the Bogota Special Circuit convicted retired General Rito Alejo del Río Rojas, precisely taking into account, among other evidence and indications, the voluntary confessions of the paramilitaries demobilized under the Justice and Peace procedure. In other words, no other evidence has been provided that would allow the Court to conclude that, in this case, the extradition of demobilized paramilitaries had affected the right to procedural truth, or prevented the courts from taking judicial decisions in keeping with the allegations of the representatives in the instant case.

392. Regarding the fact that proceedings were not opened in the ordinary criminal jurisdiction, the Court notes that no arguments or evidence was provided that would allow it to conclude that the fact that actions were taken in the jurisdiction of the Justice and Peace system and not under the ordinary system of justice had necessarily led to an impairment of

⁶³⁹ Cf. 48th Delegate Prosecutor before the Justice and Peace Court, Dossier on the Elmer Cárdenas Bloc. Genesis. Context immediately before it was planned (evidence file, folios 44465 to 44536), structures described by Fredy Rendón in voluntary confession made on November 26, 2009 (evidence file, folios 45250 to 45443), Ideology of the organization (evidence file, folios 45238 to 45248, and 45459 to 45489), Chain of command (evidence file, folios 45490 to 45512), and Demobilization proceedings (evidence file, folios 45513 to 45526).

⁶⁴⁰ Cf. *Case of Manuel Cepeda Vargas v. Colombia*, para. 166.

⁶⁴¹ Cf. *Case of the Mapiripán Massacre v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 8, 2009, considering paragraph 40.

⁶⁴² In proceedings 30451, the Criminal Cassation Chamber issued a negative opinion on the request for extradition of an individual who was a candidate for the benefits established in the Justice and Peace Act, based on the following arguments: (i) it violated the spirit of Law 975 of 2005; (ii) it ignored the rights of the victims; (iii) it disrupted the functioning of the administration of Colombian justice, and (iv) the severity of the crimes committed for which the individual’s extradition was requested was less than the crimes that he was accused of in Colombia. Cited in the *Case of Manuel Cepeda Vargas v. Colombia*, para. 166.

the right to truth and to justice of the victims. To the contrary, the arguments of the parties and the evidence provided by the representatives,⁶⁴³ the Prosecutor General's Office, and the judgment delivered by the Eighth Criminal Court of the Bogota Special Circuit of August 23, 2012, reveal that it was precisely the special Justice and Peace jurisdiction that allowed relevant information to be revealed, which then permitted a partial reconstruction of the judicial truth of what happened during the events of the case, which ultimately became an essential element in the conviction of Rito Alejo del Río Rojas.

393. In relation to the fact that the voluntary confessions of the paramilitaries under the Justice and Peace jurisdiction provided a fragmented or partial truth, the representatives did not indicate how this is different from the supposed "fragmented truths" that may be revealed in a proceeding before the ordinary jurisdiction, or how this "fragmented truth" impaired the investigations into the events of this case. In this regard, it should be repeated that it was precisely these voluntary confessions of demobilized paramilitaries, their verification by the Prosecutor General's Office, and the assessment of complementary evidence, that constituted the body of evidence that allowed the Eighth Criminal Court of the Bogota Special Circuit to reach its judicial decision with regard to Rito Alejo del Río Rojas. Lastly, as regards the supposed failure of the prosecution to verify the voluntary confessions of the paramilitaries in this case, the Court has been able to verify *supra* that these confessions were verified by the Prosecutor General's Office, and also subjected to an impartial and independent assessment by the Eighth Criminal Court in its judgment of August 23, 2012.

d) Disciplinary proceedings

394. The Court notes that the representatives and the Commission indicated, regarding the disciplinary proceedings that were carried out based on the facts of this case, that: (a) the statute of limitations had been declared in some of them; (b) in others, the last actions had been taken in 2002; (c) in another, a single instance ruling had been issued sanctioning the Director and Secretary of CODECHOCÓ by dismissing them from their posts, and (d) another was at a preliminary stage.

395. Regarding disciplinary proceedings, the Court has considered that they may be assessed to the extent that their examination contributes to the clarification of the facts, and also that the decisions are relevant owing to the symbolic value of the message of reprimand that this type of sanction can signify for public officials and members of public institutions.⁶⁴⁴ However, as they tend to protect the administrative function and are essentially designed to correct and control public officials, an investigation of this nature can complement, but cannot substitute fully for the function of the criminal jurisdiction in cases of gross human rights violations.⁶⁴⁵

396. In the instant case, the Court notes that the representatives' arguments relating to the disciplinary proceedings merely describe the procedural stage or their result without specifying or explaining the presumed violations of due diligence that could have impaired them. In this regard, the Court reiterates its consistent case law which establishes that the obligation to

⁶⁴³ Cf. *El derecho a no ser discriminado. Primer informe sobre discriminación racial y derechos de la población afrocolombiana* (summary), 2008, Bogota : Universidad de los Andes. Observatorio de Discriminación Racial. Programa de Justicia Global y Derechos Humanos y CIJUS; Proceso de Comunidades Negras (PCN); Centro de Estudios de Derecho; Justicia y Sociedad (Dejusticia) (evidence file, folios 8242 to 8311); Comisión Intereclesial de Justicia y Paz. *El proyecto paramilitar en Colombia* (evidence file, folios 8587 to 8602); Secretariado Nacional de Pastoral Social Bogota, "Situación de guerra y de violencia en el Departamento del Chocó 1996-2002," November 2002, pp. 56 and ff. (evidence file, folios 8756 to 8817); "Pasión y muerte de un denunciante en Colombia" (evidence file, folios 9764 to 9800), and Report "A Wrong Turn," issued by Human Rights Watch in November 2002 (evidence file, folio 9806).

⁶⁴⁴ Cf. *Case of the Mapiripán Massacre v. Colombia*, para. 215, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 167.

⁶⁴⁵ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits*, para. 203, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 167.

investigate is an obligation of means and not of results,⁶⁴⁶ so that the party alleging their ineffectiveness must prove that this is due to defects, negligence or omissions in the conduct of the investigations, and it is not sufficient to allege their ineffectiveness merely alluding to their current procedural stage. Therefore, the Court does not have sufficient evidence to determine the violation of due diligence in the investigations related to the disciplinary proceedings.

e) *Conclusions*

397. The Court considers that the State is responsible for not having acted with due diligence in the investigations into the members of the Armed Forces and those related to the paramilitary structures, in violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of the communities displaced from the Cacarica owing to the events of February 1997.

B.2. *Considerations on the reasonable time*

398. The Court recalls that the State made a partial acknowledgement of its responsibility for the violation of the reasonable time in the investigations into the events of this case (*supra* para. 17). Despite considering that, indeed, the duration of the domestic investigation, as a whole, did not satisfy the criteria of reasonable time referred to in Article 8(1) of the Convention, the Court underlines that, in complex cases, such as this one, it is necessary to take into account the complexity of the evidence, the numerous procedural subjects or the number of victims, the characteristics of the remedies established by domestic law, and the context in which the violation occurred,⁶⁴⁷ as well as the nature of the charges, the number of accused, and the political and social situation in the place and at the time the events occurred.

399. This case presumably involves numerous members of the Armed Forces and of the paramilitary groups, including high-ranking officers of the Armed Forces whose activities were confidential owing to the nature of their functions. In addition, hundreds of presumed victims were affected by acts that occurred in the context of the Colombian armed conflict – in a region with difficult access (*supra* para. 84), and in areas with the presence of illegal armed groups (guerrillas and paramilitaries), which entailed risks for the investigators themselves – which are, as it has been acknowledged, characteristic of systematic actions, and with potential witnesses who have displaced to different parts of the country. Therefore, it is clear that the investigation into the events of this case was extremely complex. This has been acknowledged during these proceedings both by the parties and by the Commission.

400. Regarding the two proceedings undertaken before the National Human Rights and International Humanitarian Law Unit (case files 426 and 2332), it can be observed that the investigations initiated in 1997 encountered significant obstacles owing to the context of organized crime in which the human rights violations that are being examined here occurred.

401. In relation to the investigation in case file 426, up until 2004, the Court was able to verify different actions designed, among other matters, to declare the preliminary investigation open, to order the preventive detention of the accused, and to admit a civil complaint (*supra* para. 145 and *ff.*). Regarding this proceeding, neither the Commission nor the representatives have presented information or arguments from which it could be inferred that the decision to preclude the investigation on March 9, 2004, was issued fraudulently, in collusion with the accused, or that there had been a lack of due diligence. Thus, the Court does not have evidence that would allow it to infer an excess of the reasonable time by the authorities with regard to

⁶⁴⁶ Cf. *Case of Velásquez Rodríguez v. Honduras*, Merits, para. 177, and *Case of Mendoza et al. v. Argentina*, para. 218.

⁶⁴⁷ Cf., *inter alia*, *Case of the Pueblo Bello Massacre v. Colombia*, para. 184, *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 293, *Case of Valle Jaramillo et al. v. Colombia*, para. 156, and *Case of Furlan and family members v. Argentina*, para. 156.

these proceedings. Moreover, four years have elapsed since the investigations were re-opened in 2009, which, bearing in mind the complexity of the matter, does not seem excessive. This can be reaffirmed, taking into account that the re-opening of the investigation by the Prosecutor General's Office was based on the emergence of supervening facts and evidence that had to be investigated (*supra* para. 154).

402. Regarding the investigations of the members of the paramilitary groups, the Court notes that although the events submitted to the Court's consideration happened more than 15 years ago, it is only recently, since the process of the demobilization of paramilitary groups and guerrillas started and the Justice and Peace Law was promulgated, that the investigations into the crimes committed by their members were reactivated.

403. With regard to these investigations of members of paramilitary groups, two different periods exist in the investigations: the first was from 1997 to 2004 approximately, during which the demobilization process commenced, and the second ensued from 2004 to date. Regarding the first period, the failure to conduct investigations until seven years after the events is evident and, consequently, the reasonable time was significantly exceeded. However, from the start of the demobilization of the illegal armed groups, and above all with the entry into force of the Justice and Peace Law, the State conducted investigations without any interruption aimed at determining the responsibility of paramilitaries for human rights violations in general, and in this case in particular. Although the proceedings have not been concluded, the State has informed this Court that the truth of the voluntary confessions is being verified, that two paramilitaries have been charged during a hearing, and that most of the candidates have been deprived of liberty since the start of their demobilization several years ago awaiting judgment. In addition, the actions taken by the Prosecutor General's Office since 2004 have produced valuable information that has been determinant in expediting other proceedings relating to the facts of the case, and as indicated by expert witness Ciurlizza and the deponent for information purposes Samper, have also been decisive in revealing information relating to other judicial proceedings.

B.3. Considerations on the applications for amparo concerning collective ownership

404. The Court has indicated that Article 25(1) of the Convention establishes, in general terms, the obligation of States to guarantee an effective judicial remedy against acts that violate fundamental rights. When interpreting the text of Article 25 of the Convention, the Court has maintained, on other occasions, that the State's obligation to provide a judicial remedy is not reduced to the mere existence of the courts or the formal proceedings or even to the possibility of having recourse to the courts. Rather, the State must adopt positive measures to ensure that the remedies that it provides through the judicial system are "truly effective to establish whether or not there has been a human rights violation and to provide reparation."⁶⁴⁸ Thus, the Court has declared that "the inexistence of an effective remedy against the violation of the rights recognized by the Convention constitutes a breach of the Convention by the State Party in which this situation occurs."⁶⁴⁹

405. The Court has affirmed, also, that for a State to comply with the provisions of this article, it is not sufficient that the remedies exist formally, but they must be effective.⁶⁵⁰ Thus,

⁶⁴⁸ *Case of the Saramaka People v. Suriname, Preliminary objections, merits, reparations and costs*, para. 177. See also *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

⁶⁴⁹ *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 261, and *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987, para. 24.

⁶⁵⁰ *Cf. Case of Velásquez Rodríguez v. Honduras, Merits*, paras. 63, 68 and 81, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series

under Article 25 of the Convention it is possible to identify two specific State responsibilities. The first is to establish by law and ensure the due application of effective remedies before the competent authorities that protect all persons subject to their jurisdiction against acts that violate their fundamental rights or that entail the determination of their rights and obligations. The second is to guarantee the measures to execute the respective decisions and final judgments issued by these competent authorities so that the rights declared or recognized are truly protected. This is because a judgment that is *res judicata* grants certainty in relation to the right or dispute examined in the specific case and, consequently, one of its effects is the obligation or need to comply with it. The procedure should be aimed at implementing the protection of the right recognized in the judicial ruling by its appropriate application.⁶⁵¹ Therefore, the effectiveness of judgments and judicial decision depends on their execution;⁶⁵² otherwise, this would suppose the denial of the right involved.⁶⁵³

406. Having indicated the above, in relation to the illegal logging on the communal territory, the Court has verified that State organs have issued various decisions aimed at protecting the rights of the members of the communities involved, precisely in relation to collective ownership (*supra*, para. 357).

407. Hence, in addition to the findings of the Public Prosecution Service during the disciplinary proceedings (*supra* para. 142), the Court is aware of: (a) an application for *amparo* decided in first instance by the Cundimarca Administrative Court, on September 7, 2001, ordering CODECHOCÓ “to take the necessary measures to ensure compliance with the administrative decision ordering the suspension of logging in that sector.”⁶⁵⁴ Following an appeal (*supra* para. 143), this application for *amparo* was confirmed by the Constitutional Court on October 17, 2003,⁶⁵⁵ in relation to the fundamental rights of the applicants that had been violated owing to the illegal logging on their territory, and (b) in May 1993, by the Supreme Court of Justice (*supra* para. 134) and, on October 22, 1993, the Third Review Chamber of the Constitutional Court revoked the order given to CODECHOCÓ to officialize, by contracts, the logging permits granted by resolution 3595 of December 1992 to Maderas del Darién S.A (*supra* para. 134).

408. Regarding the decisions of the Cundimarca Administrative Court of September 7, 2001, and of the Constitutional Court of October 17, 2003, the Court notes that no specific evidence was provided establishing clearly that the said decisions had been complied with fully and promptly. To the contrary, the only information that the Court has is that provided by the Ombudsman’s Office according to which, by Resolution No. 538 of April 27, 2005, CODECHOCÓ had imposed a preventive measure consisting in the suspension of any type of forestry exploitation, except “that carried out by law,” underway in the jurisdiction of Chocó department without the respective permit, concession or authorization issued by CODECHOCÓ (*supra* paras. 141 to 143). In other words, the Court notes that three and a half years passed between the decision of the Cundimarca Administrative Court and 18 months between the decision of the Constitutional Court of October 17, 2003, and Resolution No. 538 of CODECHOCÓ consisting in

C No. 220, para. 142. Also, *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

⁶⁵¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 228.

⁶⁵² Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 263, and, *mutatis mutandi*, *Case of Baena Ricardo et al., v. Panama, Competence*. para. 82, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 104.

⁶⁵³ Cf. *Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs*, para. 209, and *Case of Baena Ricardo et al. v. Panama, Competence*, para. 82.

⁶⁵⁴ Cf. Cundimarca Administrative Court, First Section, proceedings A.T 00-1378 of September 7, 2001 (evidence file, folio 46913).

⁶⁵⁵ Cf. Constitutional Court, Judgment T-955 of October 17, 2003, pp. 92 to 95 (evidence file, folios 23 to 226).

the suspension of any type of forestry exploitation, ordering the implementation of the decisions adopted on the applications for *amparo* that were filed. During this period of time the illegal exploitation of the collective property continued.

409. Furthermore, regarding the 1993 decisions of the Constitutional Court and of the Supreme Court, the proven facts reveal that CODECHOCÓ signed the logging contracts immediately after the first instance judgment of the Superior Court of the Judicial District of Quibdó in 1993, even though it was annulled by the said decisions of the Supreme Court and the Constitutional Court that year. The Court has seen no evidence that the said contracts were annulled or terminated.

410. Based on the foregoing considerations, the Court finds that the State did not ensure an effective remedy to rectify the illegality of the logging on the collective territories of the Afro-descendant communities of the Cacarica River basin; nor did it guarantee that the decisions of domestic courts that protected the rights of the Afro-descendant communities of the Cacarica River basin to their collective property were complied with fully. Consequently, the State is responsible for the violation of the right to judicial protection recognized in Article 25(2)(a) and (c) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the communities of the Cacarica River basin.

X REPARATIONS (Application of Article 63(1) of the American Convention)

411. Based on the provisions of Article 63(1) of the Convention,⁶⁵⁶ the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation,⁶⁵⁷ and that this provision “reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.”⁶⁵⁸ In addition, this Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must analyze these factors in order to rule appropriately and in accordance with law.⁶⁵⁹

412. The reparation of the harm caused by the violation of an international obligation requires, insofar as possible, full restitution, which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will decide measures to guarantee the rights that have been violated and to repair the consequences of these violations.⁶⁶⁰ Thus, the Court has considered it necessary to grant different measures of reparation in order to redress the harm integrally, so that in addition to

⁶⁵⁶ Article 63(1) of the American Convention establishes: “If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

⁶⁵⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 25, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 243.

⁶⁵⁸ *Case of Castillo Páez v. Peru. Reparations and costs*, para. 50, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 243.

⁶⁵⁹ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*, para. 110, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 245.

⁶⁶⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 244.

pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.⁶⁶¹

413. Consequently, based on the violations of the American Convention declared in this Judgment, and without prejudice to any type of reparation that is agreed subsequently between the State and the victims of forced displacement, the Court will proceed to establish the measures aimed at redressing the harm caused. To this end, it will take into account the claims of the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation.⁶⁶²

414. Regarding the general claims concerning reparations presented by the Commission and the parties, it should be noted that a discussion has arisen concerning the sufficiency of the measures included in the Victims and Land Restitution Law to make reparation to the victims in this case. This discussion will be analyzed below in relation to the pecuniary compensation (*infra* para. 469 to 475).

A. Injured party

415. Bearing in mind that, in Chapter VI, it was decided that Article 35(2) of the Court's Rules of Procedure would be applied in this case and that, consequently, the revised list of victims for the establishment of reparations is the one that includes 531 persons and that was presented by the representatives as an annex to their motions and arguments brief, the Court will proceed to determine the factual issues that, with regard to the victims in this case, have given rise to discussions within these proceedings between the Commission, the representatives and the State, as indicated previously.

A.1. Arguments of the Commission and of the parties

416. The State considered, first, that the community as such could not be considered a victim because it did not comply with the respective requirements.⁶⁶³ Second, it advised that on an individual and general basis, there were gaps⁶⁶⁴ in the information of the persons who appear on the representatives' list and indicated the importance of establishing a limit to the descendants of the victims who were legally entitled to receive reparations. Third, it had cross-checked the names of the victims indicated in the motions and arguments brief with other national lists and registries with the following results: (a) Inter-institutional Information System of the Justice and Peace Law (SIJYP): only 28 of them appear in this system;⁶⁶⁵ (b) CAVIDA members presented by the representatives in 2006 for the request for precautionary measures: this list includes 581 names and only 111 have the same name, surname and identification as those on the list of 531;⁶⁶⁶ (c) National Civil Registry:⁶⁶⁷ this only includes records of 472⁶⁶⁸ of

⁶⁶¹ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*, para. 294, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 244.

⁶⁶² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 246.

⁶⁶³ The State argued that, for the community to be considered a victim, it was necessary to prove: their ethno-cultural characteristics, their relationship with the land, and all those socio-cultural characteristics that allow a group of persons to be considered and to be part of the said community both objectively and subjectively.

⁶⁶⁴ The State indicated the following gaps: 55 persons are not identified, in the cases of 60 persons their identity documents have irregularities; the names of others are incomplete, some have not proved their connection to the events or their relationships and, lastly, some did not give a power of attorney to their representatives. In the case of the family of Marino López, of the 13 persons named, it was mentioned that two were "foster children" without providing any evidence in this regard.

⁶⁶⁵ Cf. Crosscheck between the final list and the Justice and Peace Information System of the Prosecutor General's Office (evidence file, folio 16941).

⁶⁶⁶ Cf. List of supposed victims beneficiaries of the precautionary measures (evidence file, folios 16943 to 16957).

whom 16 are deceased and 78 are “non-existent”;⁶⁶⁹ thus there are only 378 current records in the national archives, and (d) Central Registry for the Displaced Population (RUPD),⁶⁷⁰ which is being incorporated into the Central Registry for Victims (RUV): there are two problems: (a) only 158 names appear in this registry – in other words 373 are not registered, and (b) of these 158, 143 stated that they had displaced on February 28, 1997,⁶⁷¹ and of those only 14 indicated Chocó as the place they were displaced from;⁶⁷² of these 14, five stated that they had displaced collectively,⁶⁷³ and nine individually.⁶⁷⁴

417. Lastly, despite acknowledging that the status of displaced persons is obtained *de facto*, the State affirmed that the 373 victims who do not appear on the RUPD disregarded the internal system, leaving to one side the principles of subsidiarity and complementarity of the inter-American system. Based on the foregoing, the State asked the Court to abstain from recognizing as victims those who appear on the list with the representatives’ brief, because this was inexact. Furthermore, it asked that, in general, the Court only consider as victims those who prove the causal nexus between Operation Genesis and the harm and, specifically, that “the Court declare that only the 12 persons who stated that they had displaced from the municipality of Riosucio in February 1997, be considered as presumed victims of the displacement from the Cacarica river basin.”

418. The Commission asked the Court to take into consideration the aspects inherent in the complexity of the case,⁶⁷⁵ and affirmed that the evidence presented by the State to deny the status of victims was based on records of State entities such as the Central Registry for the Displaced Population (RUPD) and the Prosecutor General’s Office, which “do not have evidence to disprove the existence and identity of the victims established in the representatives’ list; rather, to the contrary, they merely reveal the difficulties that exist to determine the victims in the case of a phenomenon of massive dimensions such as the displacement that occurred in this case.” Lastly, it stated that, as indicated by Colombian Constitutional Court itself, the effect of the RUPD is not to establish the status of victim, because the “status of internally displaced is not something that can depend in any way on an administrative decision of the State.”

419. The representatives reiterated the difficulties they had faced to identify the victims, but indicated that the group of 531 persons presented with the motions and arguments brief was

⁶⁶⁷ Cf. Crosscheck between the victims and the National Civil Registry (evidence file, folios 16922 to 16939).

⁶⁶⁸ The State advised that when crosschecking the names of the victims included in the motions and arguments brief, 52 did not have an identity card number (leaving 479) and 7 were minors (subsequently it was proved that two of these had already attained their majority), for a total of 472.

⁶⁶⁹ The State explained that, by “non-existent” it is understood that, when the National Identification Archive was consulted, no one appears registered due to either an error or misrepresentation. It also indicated that, during a subsequent search for information on these 78 names, several homonyms had appeared.

⁶⁷⁰ Cf. Final written arguments of the Colombian State, Annex No. 7, case No. 12,573 Marino Lopez *et al.* v Colombia, April 8, 2013 (merits file, folio 16894).

⁶⁷¹ The State indicated that the 15 remaining victims of the 158 who appear in the brief of the representatives and on the RUPD state that they had been displaced between 1999 and 2011.

⁶⁷² The State advised that, on the RUPD, it appears that the remaining 129 persons who did not indicate Chocó as the place of expulsion stated that they had been displaced from San Juan de Urabá. In addition, these 129 include the two witnesses who testified during the public hearing before the Court: Bernardo Vivas Mosquera and Ana Sofía Roa Ramirez.

⁶⁷³ The State indicated that the victims who were displaced collectively received “payments from the bank for a total of” US\$767, “and payment for housing for a total of” US\$117,000.

⁶⁷⁴ The State indicated that the victims who were displaced individually received “payments from the bank of between” US\$734 and US\$294.

⁶⁷⁵ According to the Commission the complex aspects of this case are: (a) the situation arose in the context of the generalized violence derived from the Colombian armed conflict; (b) the massive displacement caused by Operation Genesis; (c) the accentuated vulnerability of the victims in the case, and (d) the passage of time that has resulted in changes in the situation of the victims.

the definitive list. They indicated that the list declares the status of displaced, but does not establish this⁶⁷⁶ and that, prior to this, there were other lists and, in this regard, it attached a series of statements by public officials confirming the existence of such lists. They had crosschecked the list attached to the motions and arguments brief with (a) a census conducted by the Social Solidarity Network (RSS), entity attached to the Administrative Department of the Presidency of the Republic of Colombia, between 1998 and 1999,⁶⁷⁷ and (b) another census conducted by the RSS and the Agrarian Institute (a financial entity entitled Agrarian Credit Institute with the mandate of granting credits to Colombian farmers) in the context of the “*Vivir Mejor*” rural housing program.⁶⁷⁸ Based on the said crosschecks, they concluded that “there is no doubt that the 531 victims represented by the *Comisión Intereclesial de Justicia y Paz* before the inter-American system of human rights, has been fully identified by State entities at the time of the forced displacement and subsequently.

A.2. Considerations of the Court

A.2.1 The victims of the forced displacement

420. Based on the list of 531 presumed victims presented by the representatives with the motions and arguments brief (hereinafter “the list of victims”) (*supra* para. 38), the Court will proceed to determine who will be considered victims in this specific case.

421. First, the Court notes that, apparently by an involuntary omission of the representatives, the victim Jhon James Oviedo Granada – listed as No. 29 in the report of the Commission and currently on the list of victims – was not excluded, even though the representatives had identified him as one of the persons who “owing to the passage of time and the rigor of the armed conflict, had abandoned the community many years ago and the *Comisión Intereclesial de Justicia y Paz* had been unable to locate him and contact him.”⁶⁷⁹ Therefore, the Court will not take into account the name of Jhon James Oviedo Granada on the list of victims in this case.

422. Also, the State indicated that only 28 of the persons on the list of victims were registered in the Justice and Peace Inter-institutional Information System. In this regard, the Court indicates that the fact that a person does not appear on the said list in no way affects the status as victim of a person in the instant case, because although it is true that this is a national list with which the Justice and Peace jurisdiction in Colombia operates, the fact that a persons has not appeared as a victim in the Justice and Peace proceedings bears no relationship to the proceedings before the inter-American system. Therefore, the Court finds that this argument by the State is not relevant to determine the list of victims in the instant case.

423. The Court will not make a detailed analysis in relation to the crosscheck made between the list of presumed victims in this case and the list of 581 persons presented by the representatives in 2006 in their request for precautionary measures, because the objectives of

⁶⁷⁶ During the public hearing, the representatives affirmed that there were factual grounds that reveal the status of victims of the facts of this case, because they have maintained direct contact with the State, and are part of an association with which the previous Presidents (Ernesto Samper Pizano and Andrés Pastrana Arango) signed agreements, a situation that was verified by the Public Prosecution Service.

⁶⁷⁷ The representatives advised that, on crosschecking this census, known as “Presidency of the Republic-Social Solidarity Network b, d, e and f. Families returned to Cacarica, including the settlements of Esperanza en Dios and Nueva Vida, census taken and forwarded by the Urabá Territorial Unit,” against the list of the motions and arguments brief, 425 persons appeared in the census; thus, there is a difference of 106 of the 531 persons.

⁶⁷⁸ The representatives advised that crosschecking the 531 victims in the motions and arguments brief against the census conducted by the RSS and the Agrarian Institute revealed that 47 of the victims appear on that census. Regarding the remaining persons, three of them had relocated temporarily to Bogota until very recently, and 24 were displaced in other parts of the country.

⁶⁷⁹ Motions and arguments brief (merits file, folio 356). Also, List of victims (evidence file, folio 8215).

the two proceedings are not the same. In particular, it is clear that a request for protection filed before the Commission refers to a potential situation of actual risk that could be affecting a person or a group of persons, while a contentious proceeding before this Court is related to an alleged violation of human rights of a persons or group of persons that occurred in the past. Therefore, there is no justified reason why the beneficiaries of precautionary measures decided by the Commission should be the same person as the presumed victims of a contentious case being considered by the Court. Consequently, the Court finds that this argument of the State is not relevant to determine the list of victims in this case

424. Regarding the crosscheck with the National Civil Registry, two clarifications are required. First, the Court notes that the fact that a person does not appear in the Registry cannot lead to the conclusions that they do not exist. In particular, the State did not indicate whether the birth of all those born in Colombia is registered and/or they have a citizenship card. In addition, the Court notes that several names of presumed victims appear written in different ways in the documents that were submitted to this Court; thus it is possible that the Registry may contain names written differently, which would lead to erroneous results as regards whether or not certain presumed victims “exist.” Second, the 16 persons whose identity cards appear to have been cancelled due to their decease will not be excluded either, because the State has not proved that they died before February 28, 1997, so that, if compensation is declared in their favor, those who are considered their heirs under domestic law would be legitimized to reclaim this, unless it is proved that the decedent died before the facts. Consequently, the Court finds that this argument of the State is not relevant to determine the list of victims in the case.

425. Regarding the persons who were born after the return to the Peace Communities in the Cacarica River basin, although it may be presumed that they could be affected because they were born in a situation of displacement of their parents or owing to the living conditions that they have faced, it is also true that they were not victims of the forced displacement caused by the paramilitary incursions, or of the conditions of displacement in Turbo, Bocas de Atrato or Panama. Accordingly, the 12 persons who were born during the return are excluded from the list of victims forwarded by the representatives.

426. The Court also notes that, according to the State, only 158 persons appear in the Central Registry for the Displaced Population (RUPD), and not the others included on the list of victims. However, as the Court has indicated in other cases, and as the Colombian Constitutional Court has acknowledged, “[s]ince forced displacement is a *de facto* situation, there is no need to be declared a displaced person by any public or private entity as an essential requirement to acquire that status. The fact that the Government has established a procedure to include those displaced on a national Registry for the Displaced Population, which regulates access to the assistance that has been established (immediate aid, emergency humanitarian aid, and programs for return, resettlement or relocation), is a different matter; but this mechanism is not intended to unduly determine a *de facto* situation.”⁶⁸⁰

427. Regarding the foregoing, as noted in a recent order on monitoring compliance with the judgment delivered by this Court in the *case of the Ituango Massacres v. Colombia*,⁶⁸¹ the Colombian Constitutional Court, in its Judgment T-367 of May 11, 2010, considered that certain State entities had violated the fundamental rights to a decent life and to justice, by requiring the victims of the Ituango massacres to be registered in the Information System for the Displaced Population (SIPOD) as a requirement prior to acceding to some of the measures of reparation (above all, housing, security, and medical services) ordered by the Court in their

⁶⁸⁰ Cf. Colombian Constitutional Court, Judgment T-327 of 2001. See also: Colombian Constitutional Court, Judgment T-468-06; Colombian Constitutional Court, Judgment T-211/10; Colombian Constitutional Court, Judgment T-367/10 (mentioned in the *Case of the Ituango Massacres v. Colombia, Monitoring compliance with judgment*, Order of May 21, 2013), and Colombian Constitutional Court, Judgments T-582/11 and T-1000/12.

⁶⁸¹ Cf. *Case of the Massacres of Ituango v. Colombia. Monitoring compliance with judgment*. Order of May 21, 2013, considering paragraphs 28 to 31.

favor. The high constitutional court of Colombia considered that, in that case, the said Unified List had become “an insurmountable obstacle that [perpetuated] the violation of the fundamental rights of those affected,” who are part of the population displaced by the violence, which has been recognized “as the subject of special protection owing to the extreme vulnerability in which it finds itself,” so that its rights to prompt redress and reparation of the violated rights must be diligently guaranteed by the competent authorities.

428. As the Court has established in other cases, a list of those displaced is an instrument that declares that a person is displaced, but does not make that person displaced and, consequently, it is not appropriate to exclude the 360 persons who do not appear on the RUPD from the list of victims. As Juan Pablo Franco, expert witness proposed by the State indicated, “it is evident that a person is considered an internally displaced person at the time of the events based on which he was forced to migrate within national territory, abandoning his usual place of residence or economic activities.”⁶⁸²

429. Regarding the 158 persons who appear on the RUPD and the RUV, the Court indicates that the temporal and spatial circumstances of the events that are the subject of this case are limited to those that occurred in the municipality of Riosucio in the Chocó department in 1997, so that the persons who displaced from other places and on other dates cannot be considered victims of the events analyzed in this case. This takes into account that, although it is true that the record does not constitute the status of displaced persons, the statements made by these persons in which, presuming they told the truth, they stated that they had displaced from different places and at different times to the events of the case *sub judice* cannot be disregarded.

430. The State’s obligation to make reparation arises as a result of its responsibility for the facts of the case and the victims affected by these facts. Consequently, the Court cannot order the State to make reparation to individuals who, although they are victims of other situations, have not been declared victims in this specific case. In addition, the representatives have not contested the State’s arguments in this regard, or made any observations on the appropriateness of the lists that were provided for these purposes. Thus, without prejudice to the reparations that they may have the right to claim at the domestic level, the following will not be considered victims in the instant case: (a) the 11 persons who declared before the Central Registry for the Displaced Population that they had displaced at a time other than the weeks following the implementation of Operation Cacarica and the paramilitary incursions (of these, five were not from Riosucio), and (b) the 135 persons who declared before the Registry that they displaced from a place other than the municipality of Riosucio. Therefore, regarding the 158 persons included in the RUPD and the RUV, the Court will consider only 12 of these persons as victims of this case.⁶⁸³

431. Therefore, based on the above considerations, of the original list of 531 victims presented by the representatives, the Court will consider 372 persons as victims in this case, because 341 persons had to displace owing to the facts of this case (Annex I), of whom 203 were minors at the time of the displacement (Annex II), while 31 children were born in conditions of forced displacement following the events of February 1997 (Annex III).

⁶⁸² Cf. Expert opinion provided by Juan Pablo Franco by affidavit dated January 31, 2013 (evidence file, folio 15350).

⁶⁸³ In order to reach the final list of 372 persons, the Court: (a) took the 158 who appear on the RUPD and subtracted the 129 who were expelled from the department of Antioquia, thereby obtaining a total of 29 victims: 28 who were expelled from the department of Chocó and one who had indicated as departament and municipality of expulsion “country,” but was included, giving him the benefit of the doubt. Of the 29 victims, six were excluded who had indicated that their municipality of expulsion was Carmen del Darién, Nuquí, Quibdó, Alto Baudó and Belén Bajirá, thus leaving only 23 victims: 22 from Riosucio and the one from “country.” Finally, from the 23 who were left, 11 were subtracted who had not been displaced in 1997, and thus a final list of 12 persons was obtained; and (b) to these 12 persons, were added the 360 persons who do not appear on any RUPD and RUV lists.

A.2.2 The next of kin of Marino López

432. With regard to the next of kin of Marino López, the initial list of 446 persons with Report No. 64/11 presented by the Commission made no reference to them. However, in the list of 497 persons that the representatives submitted to the Commission and that was provided to the Court in September 2011, without any pertinent clarification, five family members of Marino López were included,⁶⁸⁴ and they became part of Family 1 on List No. 2. Subsequently, the list that the representatives submitted to the Commission in November 2011, and that the latter forwarded to the Court in January 2012,⁶⁸⁵ included 14⁶⁸⁶ family members of Mr. López. Lastly, in their motions and arguments brief, the representatives excluded Leonardo Lopez Garcia without giving any reason and, thus, the final list included 13 next of kin of Marino López.

433. The State indicated that the list submitted by the representatives with the motions and arguments brief “included 13 persons who presumably were next of kin of Marino López, but regarding whom no further information was provided”; that only with regard to those who appear as Nos. 4 and 5 (Yenesid Gamboa Palacio and Jhon Freddy Palacio Palacio), it was said that they were “foster children,” but “no evidence was provided that certified this relationship. Of the 11 remaining persons, the list does not indicate their relationship to Marino López, or provide any evidence authenticating this.” Accordingly, the State asked “that the Court declare that only the two persons who have been recognized as next of kin of Marino López in the criminal proceedings underway for his murder be considered as presumed victims of his death.”

434. Regarding the persons who should be recognized as next of kin of Marino López, the Court finds that it only has a list presented by the representatives, which is not supported by any evidence that would authenticate a relationship to Mr. López, and for this reason the Court cannot recognize them as “next of kin.” This was noted and contested on several occasions by the State, without the representatives presenting arguments or evidence in this regard. Therefore, taking into account that only Emedelia Palacios Palacios has been accredited and recognized by the State as his permanent companion, and that the representatives have not provided further information on the persons that they consider family members, this Court considers that, based on what the Eighth Criminal Court of the Bogota Special Circuit recognized,⁶⁸⁷ it can only recognize Emedelia Palacios as next of kin of Marino López.

435. Nevertheless, since there is information that would allow it to be concluded that Marino López had other next of kin, the Court establishes, as it has in other cases, that the compensation ordered in this Judgment (*infra* para. 476) must be delivered to the immediate family members who come forward, provided that they appear before the competent authorities of the State between the moment of notification of this Judgment and up until one year after the date of their public summons by the State. The next of kin must provide the necessary information to identify themselves and prove their relationship.⁶⁸⁸ To this end, the State must make announcements by radio stations, with local and national coverage, at least once a month for six months as of publication of this Judgment, at peak listening hours, summoning the

⁶⁸⁴ The five members of the family of Marino Lopez included on the list were: 1) Emedelia Palacios Palacios, 2) Erlenson Palacio Palacio, 3) Libia Luz Palacio Palacio, 4) Yenesid Gamboa Palacio and 5) Jhon Freddy Palacio Palacio.

⁶⁸⁵ Cf. List of victims. Case of Marino López *et al.* (Operation Genesis), forwarded by the Commission to the Court and received by the latter on February 10, 2012 (merits file, folio 179; evidence file, folio 51408 and *ff.*).

⁶⁸⁶ Emedelia Palacios Palacios, Erlenson Palacio Palacio, Libia Luz Palacio Palacio, Yenesid Gamboa Palacio, Jhon Freddy Palacio Palacio, María Bonifacia Mosquera Peñaloza, Luis Aristarco Hinestroza, Yulis Maria Hinestroza Mosquera, Alberto Hinestroza Mosquera, Arinson Hinestroza Mosquera, Aristarco Hinestroza Mosquera, Aurelina Hinestroza Mosquera, Alirson Hinestroza Mosquera and Leonardo Lopez Garcia.

⁶⁸⁷ Cf. Eighth Criminal Court of the Bogota Special Circuit, file 2009-063, defendant Rito Alejo del Río, judgment of August 23, 2012 (evidence file, folios 14791 to 14823).

⁶⁸⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, para. 237; *Case of the Moiwana Community v. Suriname*, para. 178; *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations*. Judgment of November 19, 2004. Series C No. 116, para. 67, and *Case of the Ituango Massacres v. Colombia*, paras. 358 and 359.

members of the immediate family of Marino López to come forward with the necessary information and advising them of the procedure they should follow in this regard.

B. Obligation to investigate

B.1. Arguments of the Commission and of the parties

436. The Commission asked the Court to order the State to conduct the investigations, in a complete, impartial and effective manner, into the events that led to the forced displacement of the Afro-descendant communities of the Cacarica associated in CAVIDA and of the women heads of household who live in Turbo, as well as into the torture and murder of Marino López.⁶⁸⁹

437. The representatives agreed with the Commission and also asked the Court to order the State to create a special unit within the Prosecutor General's Office to conduct the comprehensive investigation of the human rights violations analyzed herein, as well as of the connections between paramilitaries, State agents,⁶⁹⁰ and companies that exploited the territory that the members of the communities of the Cacarica river basin were forced to abandon.⁶⁹¹ They indicated that different State agencies should take part in this investigation and it should not be cut short by the application of mechanisms such as amnesty laws, the statute of limitations, or plea bargaining. Lastly, they asked for measures of protection for the victims who take part in these investigations and that the State guarantee that extradited paramilitary leaders provide any information they have on this case.

438. The State did not present specific arguments on these requests by the Commission and the representatives.

B.2. Considerations of the Court

439. In this Judgment, the Court has declared, as partially acknowledged by the State during the processing of the case (*supra* para. 17), the violation of the right to judicial guarantees and judicial protection because the State failed to comply with its obligation to investigate and prosecute and punish, as appropriate, within a reasonable time, all those responsible for the facts of this case (*supra* paras. 397 and 398).

440. Consequently, as ordered in other cases,⁶⁹² the State must use all necessary means to continue the investigations that are open effectively and with the greatest possible diligence, and also open any that are necessary in order to individualize, prosecute and eventually punish all those responsible for the facts of this case, and remove any obstacles *de facto* and *de jure* that could maintain impunity.

⁶⁸⁹ The Commission requested explicitly that these investigations be carried out from the perspective of the group affected and taking into consideration the type of discrimination they suffer. It also asked that those found to have masterminded and perpetrated the facts as a result of these investigations be punished.

⁶⁹⁰ The representatives reiterated the importance of investigating not only the State officials who took part directly in the hostilities, but also those who permitted the economic exploitation of the territory of the Cacarica river valley by private companies.

⁶⁹¹ The representatives indicated that this should be done taking into account the context and the patterns of conduct, because the crimes were committed within the framework of a systematic and generalized attack.

⁶⁹² Cf. *Case of Manuel Cepeda Vargas v. Colombia*, para. 216, and *Case of Uzcátegui et al. v. Venezuela*, para. 248.

C. Measures of satisfaction, rehabilitation and restitution

441. The Court will establish measures that seek to repair the non-pecuniary damage, as well as measures of a public scope and repercussion.⁶⁹³ International case law and, in particular, that of the Court has established repeatedly that the judgment constitutes *per se* a form of reparation.⁶⁹⁴ Nevertheless, considering the circumstances of the case *sub judice*, and based on the adverse effects on the communities of the Cacarica area and the consequences of a non-pecuniary nature arising from the violations of the American Convention declared to their detriment, the Court finds it necessary to analyze the pertinence of measures of satisfaction, rehabilitation and restitution and guarantees of non-repetition.

442. The Court also takes note of the Commission's general request for reparation, "both at the individual and at the community level, using specific mechanisms, for the victims of the Afro-descendant community of the Cacarica associated in CAVIDA and the women heads of household living in Turbo." The Commission considered that this should be provided based on a differentiated perspective⁶⁹⁵ that recognized the impact of Operation Genesis on the community, and that required the participation of the community at all times.

443. The representatives asked that, when awarding reparation, community, gender, ethnic, and age factors should be taken into account. The State did not present specific arguments on these requests by the Commission and the representatives.

C.1. Measures of satisfaction

C.1.1. Publication and dissemination of the Judgment

444. The representatives of the victims asked the Court to order the State to "publish the judgment of the Inter-American Court in a national newspaper with widespread circulation and in a local newspaper, as well as significant aspects of the judgment on private and public television channels at peak (AAA) times." The Commission did not make this observation and the State did not refer to the representatives' request.

445. The Court finds it pertinent to order, as it has in other cases,⁶⁹⁶ that, within six months of notification of this Judgment, the State publish, once, in the Official Gazette of Colombia and in a national newspaper with widespread circulation, the official summary of this Judgment prepared by the Court and that, the entire Judgment be uploaded and remain available for one year on an official website of Colombian State institutions and organs.

⁶⁹³ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, para. 84, and *Case of Atala Rizzo and daughters v. Chile. Merits, reparations and costs*, para. 251.

⁶⁹⁴ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*, para. 56, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 250.

⁶⁹⁵ In its submission of the case, the Commission indicated that this differentiated perspective should relate to: (a) the community: taking into account its special needs, recognition and respect for its identity, culture, territories and the participation of its authorities in the decisions that affect it; (b) gender: based on the principle of non-discrimination and gender criteria that include the special needs of the displaced women and the specific needs of the women heads of household, and (d) children: giving prevalence to their best interest, respecting their dignity, the principle of non-discrimination, the right to participation, and respect for their opinions in the process of the design and implementation of measures of reparation to ensure that they can enjoy education and a satisfactory standard of living that allows them to develop fully as human beings.

⁶⁹⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 79, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, para. 254.

C.1.2. Public act to acknowledge responsibility

446. The Commission asked the Court to order the State to acknowledge its responsibility for the events denounced in the case and to organize a public act to make reparation to the victims. The representatives asked that the State be ordered to hold a “public event in Cacarica and in Bogota to acknowledge the Colombian State’s responsibility” in relation to the events that took place in the municipality of Riosucio, in the Cacarica river basin. The State did not present specific arguments in relation to these requests by the Commission and of the representatives.

447. The Court establishes that the State must hold a public act to acknowledge its international responsibility for the violations declared in this Judgment. The determination of the place and characteristics of the act must be previously consulted and agreed with the members of the community. The acknowledgement should take place during a public ceremony in the presence of senior State authorities and members of the community and must be widely publicized in the media. The State has one year as of notification of this Judgment to organize this ceremony.⁶⁹⁷

C.1.3. Other measures of satisfaction

448. The representatives asked the Court, as measures designed to support the Afro-Colombian culture and its traditions: (a) the publication of a book,⁶⁹⁸ the making of a film,⁶⁹⁹ and a radio series;⁷⁰⁰ (b) the elaboration and implementation of a plan to strengthen its cultural identity, executed based on the national policies of the Ministry of Culture in conjunction with the Ministry of Communications, which should include the creation of cultural centers in each settlement,⁷⁰¹ and (c) other related measures.⁷⁰² In addition, they requested measures relating to the construction and maintenance of museums and monuments: (d) the construction of the Museum of Afro-Colombian Heritage in Bogota with a replica in Cacarica;⁷⁰³ (e) the financing of the project for a monument “in memory of Marino López” and “for the forced displacement in five points,”⁷⁰⁴ and (f) the conservation and recognition of existing monuments.⁷⁰⁵ Lastly, they

⁶⁹⁷ Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 305.

⁶⁹⁸ The representatives added that the Court should order the State to “place on record the memory of their displacement, its causes, and the history that identifies them as a people and a community.”

⁶⁹⁹ The representatives asked that, the film should conserve “the memory of what their culture represents, of what they are today, of what they were, and of what they want to be.”

⁷⁰⁰ The representatives requested a radio series “of their memory that is broadcast by national media and community radio.”

⁷⁰¹ The representatives considered that the cultural centers should have: autochthonous musical instruments, a library with a specialized bibliography on the Afro-Colombian identity, a theater, audiovisual equipment, and a space for children with appropriate toys, beds, books and computers.

⁷⁰² The representatives also requested the construction of an amphitheater in each humanitarian zone to promote artistic activities; meeting rooms; implementation of community television or cinema, and the corresponding training for members of the communities; and the provisions of a community AM and FM radio, and award of an operating license, and training for the youth of the community.

⁷⁰³ The representatives asked that this museum should include: (a) the history of the Afro-Colombian people (b) a space for remembrance; (c) a homage to the Afro-descendant victims, and (d) a shop that sold only products elaborated by the Afro-descendant community.

⁷⁰⁴ With the expression “five points,” the representatives referred to the five-point document of demands presented to the Government for their return in conditions of dignity, safety, justice and moral reparation on April 20, 1998.

⁷⁰⁵ The representatives requested the “recognition as a national museum, the maintenance and conservation of the monument located in Nueva Vida” and “recognition, conservation and dissemination of information on the monument located in the Turbo sports arena and in Bahía Cupica.” Motions and arguments brief, para. 928 (evidence file, folio 205).

requested the creation of an inter-institutional commission to investigate the events that occurred in the municipality of Riosucio, Cacarica river basin.

449. The State indicated that the Social Solidarity Network had already made a “documentary video on the proceedings, and supported the production of a CD with songs alluding to the displacement and return of these communities.” In addition, it indicated that it had “co-financed the setting up of a community radio station in the Cacarica area.” The Commission did not present specific arguments in relation to these requests by the representatives and the State’s observations.

450. The Court does not find it necessary to order the measures requested by the representatives, because the delivery of this Judgment and the reparations ordered herein are sufficient and adequate.

C.2. Measures of rehabilitation

451. The Commission asked the Court to order the State to guarantee “technical assistance for rehabilitation.” The representatives indicated that the State should: (a) improve the existing health centers in the humanitarian zones;⁷⁰⁶ (b) facilitate the training of health promoters,⁷⁰⁷ and accept victims with the appropriate training as health promoters; (c) ensure to all the victims, including those living in Turbo, affiliation to a “State health company,”⁷⁰⁸ and (d) promote the implementation of “bio-social assistance” programs in each settlement, as well as programs of psychosocial care.⁷⁰⁹ The State did not present specific arguments with regard to these requests of the Commission and of the representatives.

452. The Court recognizes and appreciates the achievements of the State authorities as regards proving health care services to the displaced population. However, owing to the sufferings of the victims, the Court, as it has in other cases,⁷¹⁰ orders certain measures of rehabilitation. It does so, taking into account that, to date, according to the expert opinion of Juan Pablo Franco, the Ministry of Social Protection is designing a program of psychosocial assistance;⁷¹¹ in other words, that this has not yet entered into force and, consequently, these victims require appropriate psychosocial care, taking into account that the Constitutional Court itself has categorized their health coverage as “extremely poor.”⁷¹²

⁷⁰⁶ The representatives considered that the existing health care centers should be improved by the provisions of personnel, equipment and medicines that ensure the provision of services free of charge.

⁷⁰⁷ According to the representatives, these community health promoters should be included on the Riosucio municipal payroll and be ensured prompt payment of their services.

⁷⁰⁸ The representatives asked that the State guarantee that the health care company attend to the victims effectively, providing special attention to those ailments that, owing to their severity, cannot be treated in the primary health care centers in each humanitarian zone.

⁷⁰⁹ The programs of psychosocial care requested by the representatives should “emphasize fear management and the mourning process,” and should be addressed, in particular, at developing the potential of the women victims; to this end, it is necessary to train promoters of psychosocial care from within the humanitarian zones.

⁷¹⁰ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 51, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 352.

⁷¹¹ Cf. Affidavit prepared by Juan Pablo Franco, expert witness proposed by the State, on January 31, 2013 (evidence file, folio 15338).

⁷¹² In the opinion presented by the State’s expert witness, Juan Pablo Franco Jiménez, the latter advised that the Colombian Constitutional Court, in Ruling No. 219 of 2011, considered that it was not necessary to monitor the health care services provided by the Government to the displaced population, except for the access to health care services by the Afro-Colombian communities: “however, the Constitutional Court is permanently monitoring the effective access to health care services of the indigenous and Afro-Colombian communities. In its opinion, coverage is “extremely low” in these communities, and it requested further information that revealed the actions being taken to correct these shortcomings in the provision of opportune and adequate health care to those communities.” Cf. Affidavit prepared by Juan Pablo Franco, expert witness proposed by the State, on January 31, 2013 (evidence file, folio 15367).

453. Since it has been verified that the harm suffered by the victims relates not only to aspects of their individual identity, but also to the loss of their roots and their community ties, it is pertinent to establish a measure of reparation that seeks to reduce psychosocial problems. In order to contribute to the reparation of this harm, the Court considers that the State must provide, free of charge, the adequate and priority treatment that these persons require, following their consent, within six months of notification of this Judgment, and for as long as necessary, including the provision of medicines. When providing the psychological treatment, the specific circumstances and needs of each person must be considered, so that they are provided with collective, family and individual treatment as agreed with each of them, and following an individual evaluation. The State must provide this treatment through the national health services, and to this end, the victims should access the domestic reparation programs to which this Judgment refers (*infra* paras. 471 to 473), specifically the programs established to implement the measures of rehabilitation. The victims should be given immediate and priority access to health care services, regardless of the corresponding time frames established by domestic law, avoiding obstacles of any kind.

C.3. Measures of restitution

454. The Commission requested, in general, that the State take measures that guarantee the improvement of the quality of life of the members of CAVIDA and the women heads of household who live in Turbo,⁷¹³ based on their special needs and ensuring their full participation on an equal footing.

455. The representatives requested measures that they described as “ethno-educational” and which included: (a) the creation of an institutional educational project (PEI);⁷¹⁴ (b) improvement of the schools in the humanitarian zones; construction of two new high schools in each zone,⁷¹⁵ and other higher education establishments;⁷¹⁶ (c) promotion of training processes so that the victims can train as teachers and provide their services to the community,⁷¹⁷ and (d) other measures.⁷¹⁸

456. They also requested another series of reparations in order to improve: (a) production capacity: feasibility study and market research for products harvested or made by the members of the community,⁷¹⁹ and elaboration of individual and community production projects for the women of CAVIDA and those in Turbo who have not returned;⁷²⁰ (b) housing: setting up of eco-

⁷¹³ The Commission referred to: (a) freedom of movement and residence; (b) participation in public affairs under equal conditions; (c) real equality of access to public services, and (d) the free and voluntary return of the displaced who have not yet gone back to their place of origin under safe conditions.

⁷¹⁴ The PEI requested by the representatives should be developed with the Educational and Cultural Committee of each humanitarian zone, providing a plan for training and social organization with programs with ethno-cultural characteristics, and courses on ecology, agriculture, technical skills, and new technology.

⁷¹⁵ The representatives considered that these establishments should “facilitate access to the Government’s planned expansion of the Internet bandwidth,” and the teachers should provide their services on a permanent basis at the primary and secondary levels.

⁷¹⁶ The representatives requested a technical and technological training center in each humanitarian zone with the respective resources, and also “a campus of the Universidad de Antioquia, the Universidad Nacional de Colombia, the Universidad del Pacífico or another, or access to scholarships and maintenance support in higher education centers.”

⁷¹⁷ The representatives also asked that all the teachers should be included on the Riosucio municipal payroll.

⁷¹⁸ Additionally, the representatives asked that the State guarantee the victims displaced in Turbo and the children of Marino López scholarships at the elementary, secondary and university level in schools and universities of their choice.

⁷¹⁹ The representatives emphasized the particular importance of the products harvested or made by the women, or the Turbo production projects, which are considered gender-differentiated measures in the motions and arguments brief.

⁷²⁰ The representatives considered that the State should provide financial aid and infrastructure for this.

villages, improvement of housing in the two humanitarian zones,⁷²¹ with special characteristics in the case of housing for women,⁷²² and provisions of “decent housing, adapted to the family unit,” for the women displaced in Turbo and the companion of Marino López; (c) provision of public services and communications: dragging rivers⁷²³ to allow mobility between the communities;⁷²⁴ mobile telephone coverage,⁷²⁵ appropriate waste management and treatment,⁷²⁶ potable water, community aqueducts and clean energy, and (d) recreation activities for the children.⁷²⁷

457. In its final written arguments, the State mentioned a series of educational measures implemented during the “stage of emergency or humanitarian assistance” that included the delivery of materials and the training of teachers,⁷²⁸ and also the current assistance of the “*Familias en Acción*” program, which includes special measures related to education.⁷²⁹ Regarding the improvement in communications, the State referred to the contract for civil works to improve and maintain the Perancho River,⁷³⁰ regarding which the representatives had requested its dragging. In made no mention of the other measures requested by the Commission and the representatives.

458. In the instant case, the Court has been able to considered proved that, as a result of the forced displacements caused by the paramilitary incursions, the victims in the case had to abandon their territories, homes and belongings (*supra* para. 111). In addition, as recognized by the State itself, and as has been indicated by the Delegate Ombudsman for prevention of the risk of violations of human rights and international humanitarian law,⁷³¹ the armed actors in the

⁷²¹ The representatives considered that this plan should be executed with the participation of the Ministries of Agriculture, and of the Environment, Housing and Territorial Development, and the members of their Eco-production Committees, Matriarch and Patriarch Committees, Women’s Committees, Youth Committees, and Committees of Next of Kin of Victims, and also should include the installation of sanitation facilities and amenities that make them more liveable.

⁷²² In keeping with the so-called “gender-differentiated” measures, the motions and arguments brief indicated that the women’s houses in the humanitarian zones should be provided with work tools, training spaces, and a kitchen garden.

⁷²³ The rivers that should be dragged are: Limón, Bijao, Perancho, Las Pajas, Mancilla and Cirilo.

⁷²⁴ The representatives considered that mobility between the communities would lead to community development.

⁷²⁵ The representatives considered that mobile telephone coverage should include the humanitarian zones and the victims’ places of work.

⁷²⁶ The representatives considered that the said services should be provided by sustainable systems and, consequently, the State should provide the technical elements and the necessary training to the memebre of the two humanitarian zones.

⁷²⁷ They requested the creation of seven children’s playgrounds and a football academy in the humanitarian zones.

⁷²⁸ Educational humanitarian assistance included “training young volunteers from the community in the Pavarandó camp in order to provide teachers, adults and young people with conceptual and methodological tools to implement educational processes other than the established models,” and the destination of “resources from the Educational Compensation Fund amounting to 200,000,000 pesos for the department of Chocó, under agreements Nos. 091 and 153 in order to respond to the educational needs of the communities displaced by the violence.”

⁷²⁹ Regarding education, the *Más Familias en Acción* plan seeks: (a) increased school assistance and permanence at all levels; (b) coordination with the corresponding Government agencies to guarantee the offer associated with the different conditionalities of the Ministry of Education’s programs. The foregoing is supported by the delivery of an education incentive that is paid for each child in households with children between 5 and 18 years of age who attend school up to grade 11; it is paid during the 10 months of the school year; the amount is differentiated by regions and incremental by educational level.

⁷³⁰ Under contract No. 3776 of 2005, the State sought to carry out the work according to the needs requested by and agreed with the community.

⁷³¹ Cf. Ombudsman’s Office, Delegate Ombudsman for the prevention of risks of violations of human rights and international humanitarina law, Early Warning System (EWS), note No.018-12 of November 30, 2012, second note relating to risk assessment No. 031-09 A.I. of December 31, 2011 (electronic evidence file, folio 51361).

conflict continue to be present in Riosucio, which fosters a situation that gives rise to violence and insecurity.

459. The Court indicates that, as a result of the State's failure to comply with its obligation to ensure the right to collective ownership (*supra* paras. 353 and 358), the communities of the Cacarica have suffered harm that goes beyond the mere detriment to their collective wealth. The body of evidence reveals that they have a special relationship with the lands they inhabit and that, consequently, they were profoundly affected not only by being dispossessed of these lands, but also by the fact that the illegal exploitation of the natural resources by third parties was permitted. Accordingly, in order to avoid a repetition of such acts, the Court orders the State to restore the effective use, enjoyment and possession of the territories recognized by law to the Afro-descendant communities assembled in the Cacarica Community Council.

460. The Court is also aware that the members of the Cacarica communities feel insecure, particularly owing to the presence of armed agents. It is possible that this situation will not change until public order is re-established and until effective investigations and judicial proceedings are conducted that result in the clarification of the facts and the punishment of those responsible. Therefore, the Court considers, as it has in other cases,⁷³² that the State must guarantee that the conditions of the territories that the State must restitute, as well as of the place where the members of the Cacarica communities live at present, are adequate for the safety and decent life of those who have returned and also of those who have not yet done so. To this end, the State must send periodically – at least once a month – official representatives to the territories from which these persons were displaced and, in particular, to the Peace Communities (“Esperanza de Diós” and “Nueva Vida”), for the five years that follow notification of this Judgment, in order to verify the situation of public order and, consequently, they must meet with the communities or the designated representatives of the latter. If, during these monthly meetings, the inhabitants of the communities express concern about their safety, the State must take the necessary measures to guarantee this, and these measures must be designed in collaboration with the beneficiaries of such measures.

461. The Court finds that it is not appropriate to order other additional measures requested by the representatives. Nevertheless, the domestic reparation programs refer specifically to housing programs and to land restitution mechanisms, as well as to other measures of rehabilitation, satisfaction and non-repetition.⁷³³ Consequently, the victims in this case should also have access to these other forms of reparation within, at most, one year of notification of this Judgment.

D. Compensation

D.1. Arguments of the Commission and of the parties

462. The Commission asked the Court to “adopt the necessary measures to guarantee to the displaced fair compensation for the violations of which the Afro-descendant communities of the

⁷³² Cf. *Case of the Pueblo Bello Massacre v. Colombia*, para. 275, *Case of the Ituango Massacres v. Colombia*, Preliminary objection, merits, reparations and costs, para. 404, and *Case of the Mapiripán Massacre v. Colombia*, Merits, and reparations, para. 313.

⁷³³ One of the basic pillars of the National Plan of Assistance and Integral Reparation for Victims of the Colombian Armed Conflict, *Prosperidad para Todos* (hereinafter “PNARIV”) is peace-building, which according to the objectives of the Development Plan is achieved *inter alia* by the implementation of mechanisms for the integral reparation of the victims of the armed conflict in its different categories: (a) restitution; (b) compensation; (c) rehabilitation; (d) satisfaction, and (e) guarantees of non-repetition. The legal framework for the PNARIV consists of: (a) the Victims and Land Restitution Law (Law 1448 of 2011); (b) two CONPES documents: No. 3712 of 2011 and No. 3726 of 2012; (c) Decrees Nos. 4800/11, 4801/11, 4802/11, 4829/11, 4633/11, 4634/11, 4635/11 and 0599/12; (d) Program for the Psychosocial Care and Integral Health of the Victims under Law 1448/11 of the Ministry of Health and Social Protection of November 2012, and (e) decision No. 459/12 (Protocol and model of comprehensive care for victims of sexual crimes).

Cacarica associated in CAVIDA and the women heads of household who live in Turbo were victim” and “to make reparation to the next of kin of Marino López for the pecuniary and non-pecuniary harm suffered owing to the violations of the American Convention established in th[e] report.”⁷³⁴

463. The State considered that the large-scale administrative program of integral reparation established in the Victims Law was the only way to satisfy the right to adequate, prompt and effective reparation of the victims of displacement in Colombia, including, if any, those that the Court recognizes as victims in this case, given the situation that the country faces.

464. In this regard, the Commission considered that the reparations could not be channeled through and satisfied by this law, because: (a) it is a new law that is being implemented and adjusted,⁷³⁵ and (b) it distorts the nature of the inter-American system⁷³⁶ and its scope.⁷³⁷ For their part, the representatives maintained that the said law was insufficient, given the magnitude of the harm caused, as well as the nature and amount of the reparations that it included. They argued that it is a law of a general character,⁷³⁸ and the compensation that it provides for displaced persons is unclear and includes items that are not applicable in this specific case;⁷³⁹ also, that it confuses the provision of services for the displaced population with

⁷³⁴ With regard to compensation, the Commission recommended: for the next of kin of Marino López, reparation for the pecuniary and non-pecuniary harm suffered owing to the violations of the American Convention, and integral reparation at both the individual and community level by specific mechanisms for the victims of the Afro-descendant communities of the Cacarica associated in CAVIDA and the women heads of household who live in Turbo based on the principle of non-discrimination, the participation of the victims in the design and implementation of the measures of reparation, and differentiated reparation criteria for the displaced Afro-descendant population, which should include their special needs, and the recognition of and respect for their identity, culture, territories and the participation of their authorities in the decisions that affect them. Also, the establishment of a measure of community reparation that recognized the impact of Operation Genesis, the paramilitary incursions, and the displacement suffered by the Afro-descendant communities of the Cacarica, with the participation of the communities in its design and implementation. Adequate reparation for the displaced women from the Afro-descendant communities of the Cacarica associated in CAVIDA and the women heads of household who live in Turbo on gender-based criteria that included their special needs and the specific needs of the women heads of household. Reparation for the children of the Afro-descendant communities of the Cacarica associated in CAVIDA and the children of the women heads of household who live in Turbo based on measures in which the best interests of the child prevail, as well as respect for their dignity, the principle of non-discrimination, the right to participation of children, and respect for their opinions in the process of designing and implementing the measures of reparation. The measures of reparation should be aimed at ensuring the conditions required for these children to be able to enjoy education and a standard of living that allows them to develop fully as human beings.

⁷³⁵ The Commission mentioned that the effectiveness and usefulness of the Victims and Land Restitution Law have not been proved and that, to date, no analysis has been made that would allow verification of its conformity with international standards.

⁷³⁶ The Commission maintained that the obligation to make reparation is a consequences of the determination of the State's international responsibility for the violation of the rights established in the Convention and that it includes a correlative right to receive this reparation on the part of the victims; hence, in order to exercise this right, it is not admissible to stipulate additional requirements at the domestic level, however summary they may be.

⁷³⁷ The Commission indicated that conditioning the international reparation to a domestic law constituted in itself a limit to the specificity and scope of the reparations that the Court could order, which are specific to the system and may include actions by different authorities, as well as measures that go beyond pecuniary measures and that, in some cases, exceed those authorized by law at the domestic level.

⁷³⁸ The representatives indicated that Law 1448 of 2011, doesn not specifically cover the victims of this case, because it covers all the victims of the Colombian armed conflict since 1985.

⁷³⁹ The representatives considered that, in this case, reparation by means of the award, exchange or titling of land was not appropriate, because the community had been awarded title to its ancestral territory in 2000. They added that other measures should be adopted, such as guaranteeing the departure of the companies from the territory and the definitive demobilization of the paramilitary movement (measures not stipulated by law).

reparations.⁷⁴⁰ They concluded that, if this law were to be applied to this case, the right of access to justice and equality of the victims would be violated.

465. Based on the principle of subsidiarity, the State asked the Court to abstain from ordering any reparation because the presumed victims had not requested reparations before the contentious-administrative jurisdiction, which was the competent jurisdiction, and that, in the case of Colombia, this is seated in the Council of State, an entity that has been characterized by its rulings on the issue and for ordering measures of integral reparation. Nevertheless, it asked that, if the Court should order compensation, it take into account the payments made to the presumed victims under the provisions at the domestic level for providing attention and reparation to the displaced populations.

D.1.1. Pecuniary damages

466. Regarding pecuniary damage, the representatives requested: (a) payment to each family of US\$1,244,633 (one million two hundred and forty-four thousand six hundred and thirty three United States dollars), which includes the concepts of consequential damage⁷⁴¹ and loss of earnings;⁷⁴² (b) payment to the family of Marino López of US\$4,680,296 (four million six hundred and eighty thousand two hundred and ninety-six United States dollars),⁷⁴³ and (c) that

⁷⁴⁰ According to article 60 of the Victims and Land Restitution Law, the offer to the displaced population is currently in effect, and provided that it is priority, prevalent and responds to their specific vulnerabilities, it has a reparatory effect.

⁷⁴¹ The representatives indicated that the consequential damages for each family were US\$372,854 (three hundred and seventy-two thousand eight hundred and fifty-four United States dollars) and that this is composed of two items: (a) property for a total value of 12,348,000 (twelve million three hundred and forty-eight thousand Colombian pesos); they did not indicate the value in United States dollars, which includes the home, the place where the tools were kept, produce, and boats; (b) movable assets for a total of 480,972,101 (four hundred and eighty million nine hundred and seventy-two thousand one hundred and one Colombian pesos); they did not indicate the value in United States dollars). This total was obtained as follows: 1,416,293 (one million four hundred and sixteen thousand two hundred and ninety-three Colombian pesos) for tools; 36,153,700 (thirty-six million, one hundred and fifty-three thousand seven hundred Colombian pesos) for animals, 404,529,123 (four hundred and four million, five hundred and twenty-nine thousand one hundred and twenty-three Colombian pesos) for agricultural products, and 38,872,985 (thirty-eight million eight hundred and seventy-two thousand nine hundred and eighty-five Colombian pesos) for household goods abandoned owing to the displacement. In addition, they referred to community property for a total of US\$33,009 (thirty-three thousand and nine United States dollars).

⁷⁴² The representatives indicated that the loss of earnings was calculated for each family during the years that they were displaced (1998-2000); to this end, the value of animals and produce was added up and 30% was subtracted for family consumption, which gave a total of US\$871,779 (eight hundred and seventy-one thousand seven hundred and seventy-nine United States dollars) based on the following figures: (a) 1998: 494,909,448 (four hundred and ninety-four million nine hundred and nine thousand four hundred and forty-eight Colombian pesos), (b) 1999: 539,125,820 (five hundred and thirty-nine million one hundred and twenty-five thousand eight hundred and twenty Colombian pesos), and (c) 2000: 502,067,080 (five hundred and two million sixty-seven thousand and eighty Colombian pesos).

⁷⁴³ For the family of Marino López, the representatives included the value of previous pecuniary damage increased by loss of earnings (as under the previous heading) for the years 2001 to 2011 (with the respective increases of the CPI), taking into account that they stayed in Turbo and never returned. The details of the amounts for those years are: 2001: 548,678,121 (five hundred and forty-eight million six hundred and seventy-eight thousand one hundred and twenty-one Colombian pesos); 2002: 552,599,373 (five hundred and fifty-two million five hundred and ninety-nine thousand three hundred and seventy-three Colombian pesos); 2003: 555,570,018 (five hundred and fifty-five million five hundred and seventy thousand and eighteen Colombian pesos); 2004: 561,451,895 (five hundred and sixty-one million four hundred and fifty-one thousand eight hundred and ninety-five Colombian pesos); 2005: 565,313,886 (five hundred and sixty-five million three hundred and thirteen thousand eight hundred and eighty-six Colombian pesos); 2006: 567,512,010 (five hundred and sixty-seven million five hundred and twelve thousand and ten Colombian pesos); 2007: 560,323,049 (five hundred and sixty million three hundred and twenty-three thousand and forty-nine Colombian pesos); 2008: 548,559,295 (five hundred and forty-eight million five hundred and fifty-nine thousand two hundred and ninety-five Colombian pesos); 2009: 582,246,410 (five hundred and eighty-two million two hundred and forty-six thousand, four hundred and ten Colombian pesos); 2010: 575,295,100 (five hundred and seventy-five million two hundred and ninety-five thousand one hundred Colombian pesos); 2011: 594,128,990 (five hundred and ninety-four million one hundred and twenty-eight thousand nine hundred and ninety Colombian pesos).

the Court take into account “the expenses incurred by the members of the communities of the Cacarica River basin in the steps they took in order to return to their territory, such as travel to various State agencies.” In order to authenticate the pecuniary damage, the representatives attached some estimates for materials and a power plant, among other items, as well as “fact sheets with an average calculated on the census of the damage drawn up by the *Comisión Intereclesial de Justicia y Paz* in 2011,” which “was obtained from the families who were victims on oath.”

467. The Commission and the State did not present specific arguments with regard to these requests of the representatives.

D.1.2. Non-pecuniary damages

468. The representatives asked that, based on a series of consideration,⁷⁴⁴ the Court grant, as non-pecuniary damages, to the family of Marino López the sum of US\$100,000.00 (one hundred thousand United States dollars); to those displaced to Turbo, Bocas del Atrato and Bahía Cupica US\$80,000 (eighty thousand United States dollars), and to the women displaced to Turbo US\$90,000 (ninety thousand United States dollars). Added to this, they asked as a gender-differentiated measure, for financial subsidies to be granted to the women heads of household in recognition of the loss of their husbands or companions in Operation Genesis or, if they were already heads of household, owing to the difficulties suffered.⁷⁴⁵

D.2. Considerations of the Court

469. Regarding the measure of compensation, the Court notes that information was presented concerning domestic administrative mechanisms of reparation that exist in Colombia, and that have been adopted recently, which benefit “those persons who individually or collectively have suffered harm owing to events that took place after January 1, 1985, as a result of violations of international humanitarian law or gross and manifest violations of international human rights law that occurred as a result of the internal armed conflict,”⁷⁴⁶ and specifically for human rights violations relating to murder, forced disappearance, kidnapping, injuries that have caused temporary or permanent disability, torture or inhuman and degrading treatment, crimes against sexual liberty and integrity, forced recruitment of minors, and forced displacement.⁷⁴⁷

470. In relation to the measures of reparation, the Court underlines that international law establishes the individual entitlement of the right to reparation. Despite this, the Court indicates that, in scenarios of transitional justice in which States must assume their obligations to make

⁷⁴⁴ The representatives asked that the Court take into account: (a) the torture inflicted on Marino López, in the presence of several members of the community; the brutality with which he was murdered, and dismembered; (b) the devastating physical and psychological effects of Operation Genesis on the communities; (c) the joint participation of soldiers and paramilitaries in Operation Genesis; (d) the way that the population had to leave the territory, under coercion, terrorized, fearful for their own life and that of their loved ones; (e) the conditions in which the population had to survive in Turbo, Bocas del Atrato and Bahía Cupica; (f) the disintegration of the social and ethnic tissue, and of the traditions and customs; (g) the damage inflicted on the territory in the absence of the communities; (h) the persecution and threats that the victims had to face while they were displaced; (i) the denial of the facts by the State and the absence of effective policies to respond to the situation; (j) the continuation of the threats and the acts of violence against the victims, and (k) the denial of justice during 15 years, ever since the time of the events.

⁷⁴⁵ The representatives indicated that it should be recalled that, nowadays, in the case of the women heads of household, Law 1232 of 2008 has established some assistance with regard to education and production activities, but no specific financial subsidies.

⁷⁴⁶ Cf. Colombian Law on Victims and Land Restitution, article 3 on “The transitional justice arrangement in force in Colombia” provided by Miguel Samper Strouss, Vice Minister of Justice and deponent for information purposes proposed by the State, during the hearing held at the Inter-American Court of Human Rights on February 11, 2013.

⁷⁴⁷ Cf. Decree 4800 of 2012 on the transitional justice arrangement in force in Colombia provided by Miguel Samper Strouss, Vice Minister of Justice and deponent for information purposes proposed by the State, during the hearing held at the Inter-American Court of Human Rights on February 11, 2013 .

reparation on a massive scale to numerous victims, which significantly exceeds the capacities and possibilities of the domestic courts, administrative programs of reparation constitute one of the legitimate ways of satisfying the right to reparation. In these circumstances, such measures of reparation must be understood in conjunction with other measures of truth and justice, provided that they meet a series of related requirements, including their legitimacy – especially, based on the consultation with and participation of the victims; their adoption in good faith; the degree of social inclusion they allow; the reasonableness and proportionality of the pecuniary measures; the type of reasons given to provide reparations by family group and not individually; the distribution criteria among members of a family (succession order or percentages); parameters for a fair distribution that take into account the position of the women among the members of the family or other differentiated aspects, such as whether the land and other means of production are owned collectively.⁷⁴⁸

471. Furthermore, in the case of pecuniary reparations, a criterion of justice should include aspects that, in the specific context, do not become illusory or derisory, and make a real contribution to helping the victim deal with the negative consequences of the human rights violations on his life.

472. In this case, the Court recognizes and appreciates the progress made by the State as regards making reparation to victims of the armed conflict, implemented with increased momentum since the promulgation of the Victims Law. In addition, it is clear that, as mentioned by the deponent for information purposes in his presentation during the hearing and in the document that he handed over at that time,⁷⁴⁹ the point that the State has arrived at is the result of an evolution in the conflict and of the measures taken by the Government not only to combat this, but also so that, regardless of what happens in the context of the conflict, the victims have the right to reparation. As indicated in the expert opinion of Juan Pablo Franco, proposed by the State, the Constitutional Court has recognized the progress that the Law on Victims and Land Restitution has represented in the area of reparations.⁷⁵⁰

473. The Court also received information on Decree 4635 of 2011, “establishing measures of assistance, attention, integral reparation and land restitution to the victims belonging to the Black, Afro-Colombian, Raizal and Palenquera communities,” which include, in the case of Afro-Colombian communities that have suffered collective harm, the possibility of providing them, in addition to the individual administrative compensation, with a collective compensation and a program of advisory services and support for the investment of the resources provided as collective and individual compensation. All this is executed through an Integral Collective Reparation Plan (PIRC), a procedure developed together with the communities that includes prior consultation and that is described in the Decree.⁷⁵¹

⁷⁴⁸ Similarly, see, United Nations, Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-conflict States: Reparations Programmes, 2008.

⁷⁴⁹ Cf. The transitional justice arrangement in force in Colombia, provided by Miguel Samper Strouss, Vice Minister of Justice and deponent for information purposes proposed by the State, during the hearing held at the Inter-American Court of Human Rights on February 11, 2013.

⁷⁵⁰ Cf. Testimony of expert witness Juan Pablo Franco provided on January 31, 2013, by affidavit. The expert witness did not refer to specific decisions of the Constitutional Court. He indicated that “[t]he Constitutional Court recognized the progress in the reformulation of the policies on land, truth, justice and reparation as of 2010 [...]. Regarding the policy of truth, justice, reparation and guarantees of non-repetition, it emphasized the progress made in the elaboration of guidelines following the issue of Law 1448 of 2001.” In addition, the administrative compensation to which this Court refers includes the latest interpretation given by the Colombian Constitutional Court in its Judgment C-426 of 2013 regarding article 132 of the Victims Law, in which it established that, for victims of forced displacement, the compensation is additional to the mechanisms indicated in paragraph 3 of this article (evidence file, folio 15310).

⁷⁵¹ Cf. This refers to the Policy of Attention to the Black, Afro-Colombian, Raizal and Palenquera Communities.

474. Lastly, the principle of the complementarity of international law cannot be disregarded. This is recognized in the Preamble to the American Convention⁷⁵² and has been taken into account by the Court in other cases⁷⁵³ to acknowledge the compensation granted at the domestic level and to abstain from ordering reparations in this regard, when this is pertinent.

475. The Court decides that the Colombian State must guarantee that all the persons who have been recognized as victims in this Judgment (*supra* paras. 431) have priority access to the said administrative reparations, and that it proceed to pay them, as soon as possible, irrespective of the time frames that domestic law may have established for this, avoiding obstacles of any type. The foregoing must be implemented within no more than one year of notification of this Judgment.

476. In addition, in the case of the next of kin of Marino López, the Court notes that they suffered different types of effects owing to his death, namely: (a) owing to the particularly cruel circumstances in which Marino López was executed (*supra* para. 435), and (b) owing to the fact that this act remained unpunished for 15 years, and that, even today, those responsible have not been tried or punished. Based on the criteria established in its consistent case law, the Court finds it pertinent to establish, in equity, for the pecuniary and non-pecuniary harm caused to Marino López Mena, the sum of US\$70,000.00 (seventy thousand United States dollars) or the equivalent in Colombian pesos, which must be paid within the respective time frame (*infra* para. 482) to Mrs. Palacios, companion of Mr. López, as well as the sum of US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Colombian pesos, to each of Mr. López Mena's children, and US\$10,000.00 (ten thousand United States dollars) to each of his siblings, to be determined as indicated above (*supra* para. 435).

E. Costs and expenses

477. The representatives indicated that they have been supporting the community from February 28, 1997, to date, as well as during "approximately eleven [...] years of litigation at the domestic level, and four years at the international level." They also indicated that the average expenditure, per person, to visit the humanitarian zones is US\$700 (seven hundred United States dollars) and that, in activities of "gathering information, powers of attorney, development of the reparation proposal presented in this brief, and information activities to explain to the victims" about the inter-American system and the processing of this case, they had incurred expenses of US\$17,500 (seventeen thousand five hundred United States dollars). Lastly, they calculated that their expenses in relation to the litigation before the Inter-American Court amounted to US\$6,000 (six thousand United States dollars) and the value of the support provided from 2002 to 2011⁷⁵⁴ at US\$793,866 (seven hundred and ninety-three thousand eight hundred and sixty-six United States dollars). To authenticate the foregoing, the representatives attached a series of invoices for public services, stationery expenses, restaurants, plane and bus tickets, payments they had made in the name of various individuals, and other elements, without providing any further explanation.

478. The Commission did not make any claims and the State did not refer to the representatives' request.

⁷⁵² Cf. Preamble to the 1969 American Convention on Human Rights: "Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States."

⁷⁵³ Cf. *Case of the Santo Domingo Massacre v. Colombia*, para. 336, and *Case of Manuel Cepeda Vargas v. Colombia*, para. 246.

⁷⁵⁴ The total value of the support from 2002 to 2011 was disaggregated by the representatives as follows: (a) 49.5% personnel expenses; (b) 23.9% travel and transport expenses; (c) 3.7% legal procedures, and (d) 22.9% administrative expenses.

479. The Court reiterates that, according to its case law,⁷⁵⁵ costs and expenses are part of the concept of reparation, because the activities deployed by the victims in order to obtain justice at both the national and the international level entail disbursements that must be compensated when the international responsibility of the State is declared in a judgment.

480. Regarding the reimbursement of expenses, the Court must make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those arising during the processing of the case before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made on the basis of the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.⁷⁵⁶

481. In this regard, the Court notes that even though the file contains a series of invoices and receipts provided by the representatives, this does not constitute probative support relating them to expenses made owing to the case and, thus, justifying the amounts requested by the representatives for honoraria and professional services, because they were not accompanied by any explanation as to how this sum was determined.⁷⁵⁷ Consequently, the Court establishes, in equity, the sum of US\$80,000.00 (eighty thousand United States dollars) for the *Comisión Intereclesial de Justicia y Paz* for costs and expenses related to these proceedings.

F. Method of complying with the payments ordered

482. The State must make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons indicated herein or, as requested by the representatives, to the person who they appoint to receive it by means of an instrument that is valid under Colombian law, within one year of notification of this Judgment, in accordance with the following paragraphs.

483. The State must comply with its monetary obligations by payment in United States dollars. If, for causes that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts decided within the indicated time frame, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a solvent Colombian financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

484. The amounts allocated in this Judgment as compensation and to reimburse costs and expenses must be delivered to the persons indicated integrally, as established in this Judgment, without any reductions for eventual taxes or charges.

485. If the State should incur in arrears, it must pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Colombia.

X OPERATIVE PARAGRAPHS

486. Therefore,

⁷⁵⁵ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs. Judgment of August 27, 1998. Series C No 39, para. 79,* and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, para. 316.*

⁷⁵⁶ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, para. 82,* and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, para. 316.*

⁷⁵⁷ Cf. *Case of Chitay Nech et al. v. Guatemala, para. 287,* and *Case of Suárez Peralta v. Ecuador, para. 219.*

THE COURT

DECIDES,

unanimously,

1. To establish that it is not in order to rule in a preliminary manner on the claims made by the State as “preliminary objections,” in the terms of paragraphs 33 to 36 of this Judgment.

DECLARES,

unanimously that:

2. The State is responsible for the violation of the rights to personal integrity and not to be forcibly displaced (included in the right to freedom of movement and residence), recognized in Articles 5(1) and 22(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of the Afro-descendant communities displaced from the Cacarica River basin and/or who were present at the time of the paramilitary incursions, as described in paragraphs 241 to 280 of this Judgment.

3. The State is responsible for the violation of the rights to life and to personal integrity, recognized in Articles 4(1), 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Marino López Mena, owing to its failure to comply with its obligations of prevention, protection and investigation, as well as for the violation of the right to personal integrity to the detriment of his next of kin, as described in paragraphs 281 to 282 of this Judgment.

4. The State is responsible for failing to comply with its obligations to ensure humanitarian assistance and a safe return, in violation of the right to freedom of movement and residence and of the right to personal integrity, recognized in Articles 22(1) and 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the Afro-descendant communities of the Cacarica River basin who were in a situation of forced displacement, as described in paragraphs 315 to 324 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity, recognized in Article 5 of the American Convention, in relation to Articles 1(1) and 19 of this instrument, to the detriment of the displaced children of the Afro-descendant communities of the Cacarica River basin, as well as of those who were born in a situation of displacement, indicated in Annexes II and III of this Judgment, as described in paragraphs 327 to 331 of this Judgment.

6. The State is responsible for the violation of the right to collective property, recognized in Article 21 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of the Afro-descendant communities displaced from the Cacarica River basin and of the members of the Community Council of the Communities of the Cacarica River basin, as described in paragraphs 344 to 358 of this Judgment.

7. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of Marino López, of the members of the Afro-descendant communities displaced from the Cacarica River basin, and of the Community Council of the Communities of the Cacarica River basin, as described in paragraphs 368 to 410 of this Judgment.

8. The State is not responsible for the violation of the rights to life and to personal integrity, recognized in Articles 4 and 5 of the American Convention, in relation to the bombing carried

out during the execution of Operation Genesis, as indicated in paragraphs 227 to 240 of this Judgment.

9. It is not incumbent on the Court to rule on the alleged violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as indicated in paragraph 282 of this Judgment.

10. It is not incumbent on the Court to rule on the alleged violation of the right to honor and dignity, protection of the family, and equality before the law, contained in Articles 11, 17 and 24 of the American Convention, or on the alleged non-compliance with the obligation to adopt provisions of domestic law established in Article 2 of this instrument, as indicated in paragraphs 332 to 338 of this Judgment.

AND ESTABLISHES,

unanimously:

11. This Judgment constitutes *per se* a form of reparation.

12. The State must use all necessary means to continue, effectively and with the greatest diligence, the investigations that have been opened, as well as open any that are necessary in order to individualize, prosecute and eventually punish all those responsible for the facts of this case, and remove all the obstacles, *de facto* and *de jure*, that may maintain impunity, as established in paragraphs 439 to 440 of this Judgment.

13. The State must make the publications ordered, as established in paragraph 445 of this Judgment.

14. The State must organize a public act to acknowledge international responsibility for the facts of this case, as established in paragraph 447 of this Judgment.

15. The State must provide the appropriate and priority medical treatment required by the victims of this case, in the context of the reparation programs established by domestic law, as established in paragraphs 452 and 453 of this Judgment.

16. The State must restore the effective use, enjoyment and possession of the territories recognized by domestic law to the Afro-descendant communities assembled in the Community Council of the Communities of the Cacarica River basin, as established in paragraph 459 of this Judgment.

17. The State must ensure that the conditions of the territories that are restored to the victims in this case, as well as of the place where they are living currently, are adequate for the safety and decent life of both those who have returned and of those who have not yet done so, as established in paragraphs 460 and 461 of this Judgment.

18. The State must ensure that all the persons who have been recognized as victims in this Judgment receive the compensation established by the pertinent domestic laws referred to in paragraph 475 of this Judgment, within one year of its notification.

19. The State must pay the amounts established in paragraph 476 of this Judgment for the pecuniary and non-pecuniary harm caused to Marino López Mena and his next of kin, and to this end must make the pertinent publications and broadcasts, as well as pay the amounts established for reimbursement of costs and expenses, within one year of notification of this Judgment, as indicated in paragraphs 479 and 481 hereof.

20. The State must provide the Court with a report on the measures adopted to comply with this Judgment within one year of its notification.

21. In exercise of its attributes and pursuant to its obligations under the American Convention on Human Rights, the Court will monitor complete compliance with this Judgment, and will consider this case concluded when the State has complied fully with all its provisions.

Done, at San José, Costa Rica, on November 20, 2013, in the Spanish language.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

ANNEX I. DISPLACED PERSONS

Displaced persons			
1	Ferney	de Jesus	Acosta
2	Abernego		Acosta López
3	Carmen	Edith	Acosta Matias
4	Mileydis		Acosta Matia
5	Ana	Rosa	Álvarez Lozano
6	Edilsa		Angulo Martínez
7	Gloribel		Angulo Martínez
8	Henrry		Angulo Martínez
9	Jarlenson		Angulo Martínez
10	Feliciano		Arboleda Hurtado
11	Luisa	Albertina	Argumedo De Perez
12	Arley		Avila Correa
13	Feliberto		Avila Moreno
14	Teofilo		Avila Julio
15	Yecely		Avila Correa
16	Delis		Ávila Moreno
17	Deysy		Ávila Álvarez
18	Emperatriz		Ávila Julio
19	Federman		Ávila Carmona
20	Ferley		Ávila Quinto
21	Jorge	Eliecer	Ávila Moreno
22	Lenis		Ávila Bautista
23	Neider	Camilo	Bautista
24	Heney		Bautista Mantilla
25	Lucelis		Bautista Pérez
26	Luis	Fernando	Bautista Perez
27	Luz	Deisy	Bautista Perez

28	Maryuri	Bautista	Perez
29	Ana Bertilde	Berrio	Mosquera
30	Félix Antonio	Berrio	Berrio
31	Jhohan Arley	Berrio	Berrio
32	Rosa Albina	Berrio	Berrio
33	Juan Francisco	Bertel	Ojeda
34	Maritza	Blandón	Mosquera
35	Virgelina	Blandón	Palacio
36	Bencol	Chaverra	Zalazar
37	Jhon Jairo	Chaverra	Salazar
38	Luz Estela	Chaverra	Salazar
39	Luz Dari	Chaverra	Salazar
40	Yeffer	Chaverra	Zalazar
41	Yisela	Chaverra	Zalazar
42	Baldoino	Chaverra	Salazar
43	Angie	Copete	Mosquera
44	José Lucio	Copete	Córdoba
45	Luz Nelly	Copete	Mosquera
46	María Romelia	Córdoba	
47	José	Córdoba	Palacio
48	Rosalba	Córdoba	Rengifo
49	Yaduvís	Córdoba	Córdoba
50	Rubiela	Cossio	Cossio
51	Mirna Luz	Cuadrado	
52	Juan Carlos	Cuesta	Miranda
53	Juan Carlos	Cuesta	Miranda
54	José Efrain	Dávila	Hibarguen
55	Virginia	Del Socorro	Martínez
56	Edilberto	Furnieles	Páez
57	Francisco	Gallego	

58	Edilson	García	Páez
59	Diober	Giraldo	Marquez
60	Alexander	Gómez	Ávila
61	Augusto	Manuel	Gómez
62	Emperatriz	Gómez	Ávila
63	Onny	Livis	Gómez
64	María	Del Carmen	Gómez
65	Carolina	Herrera	Gomez
66	Alberto	Hinestroza	Mosquera
67	Alerson	Hinestroza	Mosquera
68	Arinson	Hinestroza	Mosquera
69	Aristarco	Hinestroza	Mosquera
70	Aurelina	Hinestroza	Mosquera
71	Luis	Demetrio	Hinestroza
72	Samir	Hinestroza	Ramirez
73	Yulis	María	Hinestroza
74	Hernán	De Jesús	Holguín
75	Jorge	Luis	Holguín
76	Jose	Deyler	Hurrutia
77	Leydis	Hurrutia	Martínez
78	Maria	Nelly	Hurtado
79	Juan	David	Ibarguen
80	Betzaida	Julio	Santana
81	Robinson	Largacha	Casade
82	Justa	Lemos	De Palomeque
83	Isaias	Leon	Cuadrado
84	Elizabeth	Lopez	Julio
85	Escarlet	Lopez	Julio
86	Januar	López	Julio
87	Albarina	Martinez	De Salazar

88	Juan	Sebastian	Martinez	Sanchez
89	Ana	Del Carmen	Martínez	Moreno
90	Arley	Miguel	Martínez	Ramos
91	Emilsen		Martínez	Martínez
92	Félix		Martínez	M.
93	Gloria	Luz	Martínez	Ramo
94	Irma		Martínez	Murillo
95	Liseth	María	Martínez	
96	Liseth	María	Martínez	
97	Luis	Enrique	Martínez	Valderrama
98	Martin	Emilio	Martínez	Valderrama
99	Oswaldo	Miguel	Martínez	Ramos
100	Fidel		Matia	Mercado
101	Jhon	Jameth	Matia	M.
102	Francisco	Miguel	Matía	
103	Marco	Fidel	Matía	Melendes
104	Nilson	Manuel	Matía	M.
105	Yadira	Del Carmen	Matias	Meléndes
106	Carlos	Mario	Matías	Meléndes
107	Gleyna		Medrano	Romero
108	Henodiz		Medrano	Díaz
109	Indira		Medrano	Romero
110	Jacinto		Medrano	Pareja
111	Jader		Medrano	Romero
112	Lilia		Medrano	Romero
113	Marbel		Medrano	Romero
114	Natalio		Medrano	Pareja
115	Onasis		Medrano	Pareja
116	Umbelina		Medrano	Pareja
117	Inés	Del Carmen	Melendres	

118	Dayner	Rafael	Mena	Pérez
119	Dayver	Javier	Mena	Pérez
120	Eugenia		Mena	Blandón
121	Gelver	Andrés	Mena	Mosquera
122	Josefina		Mena	Moreno
123	Mariluz		Mena	Blandón
124	Maryleicy		Mena	Blandon
125	Modesta		Mena	Pérez
126	Serbelina		Mena	Moreno
127	Taylor		Mena	Mosquera
128	Ferley		Mendoza	Sanchez
129	Fredy		Mendoza	Sánchez
130	Segundo	Manuel	Mendoza	Monterrosa
131	Weimar		Mendoza	Sánchez
132	Gregorio		Mercado	S.
133	Wilberto		Mogrovejo	M.
134	Tomas	Enrique	Monterosa	
135	Alex	Yefferson	Moreno	Mosquera
136	Carmelina		Moreno	Álvarez
137	Deivis		Moreno	Quejada
138	Flora	Mercedes	Moreno	Fuentes
139	Gladys	Helena	Moreno	Alvarez
140	Ivan	Andrés	Moreno	Moreno
141	José		Moreno	Álvarez
142	Luis	Alberto	Moreno	Álvarez
143	Vasiliza		Moreno	Córdoba
144	Cruz	Maritza	Mosquera	
145	Ledis		Mosquera	
146	Alicia		Mosquera	Hurtado
147	Alirio		Mosquera	Palacio

148	Andrés		Mosquera	Hurtado
149	Arley		Mosquera	Palacios
150	Aura		Mosquera	Mosquera
151	Cleyber		Mosquera	Murillo
152	Deysi		Mosquera	Palacio
153	Diover		Mosquera	Palacio
154	Doralina		Mosquera	Hinestroza
155	Elmer	Luis	Mosquera	Mosquera
156	Erdin		Mosquera	Mosquera
157	Eterbina		Mosquera	Murillo
158	Fanny		Mosquera	Murillo
159	Fanny		Mosquera	Murillo
160	Floriano		Mosquera	Río
161	Froilan		Mosquera	Palacio
162	Glenis		Mosquera	Valois
163	Gloria		Mosquera	Palacio
164	Hernanegilda		Mosquera	In document Hermenegilda Mosquera Murillo
165	Hernanegilda		Mosquera	In document Hermenegilda Mosquera Murillo
166	Jhobanis		Mosquera	Valois
167	Jhon	Jader	Mosquera	Palacio
168	Jhon	Fredy	Mosquera	Murillo
169	Jhon	Fredy	Mosquera	Murillo
170	Jhonnis		Mosquera	
171	José	Arceliano	Mosquera	Potes
172	Ledy		Mosquera	Mosquera
173	Leyton		Mosquera	Mosquera
174	Luis	Heladio	Mosquera	Murillo
175	Luz	Mari	Mosquera	
176	Maria	Nellys	Mosquera	Murillo

177	Marinelly		Mosquera	Murillo
178	Miguel		Mosquera	Mosquera
179	Osme		Mosquera	Mosquera
180	Raquel		Mosquera	Palacios
181	Remigia		Mosquera	
182	Rosa	Elena	Mosquera	Palacio
183	Rosa	Del Carmen	Mosquera	Quinto
184	Tarcilo		Mosquera	Palacio
185	Tatiana		Mosquera	Martínez
186	Teresita		Mosquera	Mosquera
187	Wilmar		Mosquera	Mosquera
188	Yadiris		Mosquera	Potes
189	Yaquelin		Mosquera	Murillo
190	Yasira		Mosquera	Córdoba
191	Yeison		Mosquera	Mosquera
192	Yhan	Carlos	Mosquera	Palacios
193	Yisela		Mosquera	
194	Yuber		Mosquera	Mosquera
195	Yurley		Mosquera	Palacios
196	Yusenis		Mosquera	Mosquera
197	Luz	Mila	Mosquera	Palacio
198	Digna	Maria	Mosquero	R.
199	Esomina		Murillo	Palacio
200	Farney		Murillo	Martínez
201	Inocencia		Murillo	Caicedo
202	Ismael		Murillo	Palacios
203	Ismael		Murillo	Palacios
204	Jhon	Erlin	Murillo	Mosquera
205	Luis	Alexis	Murillo	
206	Luz	Surely	Murillo	

207	Luz	Farley	Murillo	Palacios
208	Mariana		Murillo	
209	Mariluz		Murillo	
210	Miguelina		Murillo	Palacios
211	Yernis	Eneida	Murillo	Caicedo
212	Manuel	Dolores	Navarro	
213	Didier		Olguín	Rivera
214	Luis	Hernán	Olguín	Rovira
215	Yanelly		Orejuela	
216	Edwin		Orejuela	Quinto
217	Eladio		Orejuela	Murillo
218	Eminto		Orejuela	Quinto
219	Erika		Orejuela	Quinto
220	Genier		Orejuela	Quinto
221	Ingris	Johanna	Orejuela	Mosquera
222	Jany		Orejuela	Quinto
223	José	Wilton	Orejuela	Mosquera
224	Ledis	Patricia	Orejuela	Quinto
225	Magnolio		Orejuela	Córdoba
226	Mónica		Orejuela	Quinto
227	Nesman		Orejuela	Waldo
228	Rosana		Orejuela	Mosquera
229	Nuvis		Osario	Sánchez
230	Álvaro	Javier	Osorio	Sánchez
231	Neyi		Osorio	Sánchez
232	Ramiro	Manuel	Osorio	Espitia
233	Alejandro		Palacio	Mosquera
234	Ana	Rosiris	Palacio	Palomeque
235	Carolina		Palacio	Mosquera
236	Jhon	Erlyn	Palacio	Mosquera

237	Jhon	Fredy	Palacio	Palacio
238	José	Willington	Palacio	Murillo
239	Luis	Arselio	Palacio	Palomeque
240	María	Derlin	Palacio	Mosquera
241	Viviana		Palacio	Mosquera
242	Yarlenis		Palacio	Pacheco
243	Yasira		Palacio	
244	Yalira		Palacio	Palacio
245	Mercy	Yarnile	Palacion	Mosquera
246	Carlos	Victoriano	Palacios	
247	Angel	Nelys	Palacios	
248	Angel	Tulio	Palacios	Murillo
249	Diana	Patricia	Palacios	Murillo
250	Edilson		Palacios	Ramírez
251	Elis	Yesenis	Palacios	Mosquera
252	Emedelia		Palacios	Palacios
253	Farleys		Palacios	Pacheco
254	Herlenson		Palacios	Palacios
255	Jhon	Alvis	Palacios	Murillo
256	José	Jimmy	Palacios	Palacios
257	Julia	Ayde	Palacios	Cossio
258	Libia	Luz	Palacios	Palacios
259	Luz	Nively	Palacios	Murillo
260	Mariela		Palacios	
261	Maritza		Palacios	Pacheco
262	Patricia		Palacios	Murillo
263	Placido		Palacios	Cabrera
264	Rosa	Gladys	Palacios	Pacheco
265	Wilmar		Palacios	Palomeque
266	Yader		Palacios	Mosquera

267	Yonier		Palacios	Mosquera
268	Astrid	Yuliana	Palacios	
269	Yesica	Paola	Palacios	
270	Felicia		Palomeque	Sánchez
271	Felicia		Palomeque	Sánchez
272	Martha	Cecilia	Pareja	Pareja
273	Alex		Perea	Palacios
274	Esneider		Perea	Mosquera
275	Jhone		Perea	Martínez
276	Luvis		Perea	Mosquera
277	Vilma		Perea	Mosquera
278	Weimar		Perea	Palacios
279	Werlin		Perea	Palacio
280	Justina	Isabel	Perez	
281	Jhohana		Perez	Julio
282	Ana	Rosa	Pérez	Argumedo
283	Gerónimo		Pérez	Argumedo
284	Jar	Leider	Pérez	Julio
285	Prisca	Rosa	Pérez	Argel
286	Wilmar		Pérez	Martínez
287	Ana	Sofía	Quinto	Valencia
288	Deiner		Quinto	Mosquera
289	Ilsa	Edith	Quinto	Mosquera
290	José	Ever	Quinto	Orejuela
291	Luis	Nelson	Quinto	Roque
292	Waderson		Quinto	Mosquera
293	Yaisi	María	Quinto	Mosquera
294	Yiverson		Quinto	Mosquera
295	Duvan		Ramirez	Lopez
296	Eduar		Ramirez	Mosquera

297	Dairon		Renteria	Moreno
298	Carlos	Andrés	Rivas	Palacios
299	Jhon	Alexander	Rivas	Blandon
300	Sofía		Roa	Ramírez
301	Marilenis		Romaña	Palacios
302	Esther		Romero	Díaz
303	Sonia		Rovira	Valencia
304	Walter		Salazar	Ganboa
305	Carmen		Sanchez	Mosquera
306	Ana	Teresa	Sánchez	González
307	Eliodoro		Sánchez	Mosquera
308	Ferney		Sánchez	González
309	Leyder		Sánchez	Mosquera
310	Yilber		Sánchez	Mosquera
311	Ascisclo		Santos	Valencia
312	Ascisclo		Santos	Valencia
313	Andrés	Felipe	Serna	
314	Víctor	Alfonso	Serna	Echeverri
315	Juan	Manuel	Sierra	Perez
316	Marcilia	Del Carmen	Sierra	Perez
317	Marcilia	Del Carmen	Sierra	Perez
318	Erika		Sureliz	Palacio
319	Pedro		Torres	Hernández
320	Pedro		Urtado	Uwaldo
321	Pedro		Urtado	Uwaldo
322	Paola	Andrea	Valderrama	
323	José	Domingo	Valderrama	Quinto
324	Marlevis		Valderrama	Murillo
325	Martha		Valderrama	Mosquera
326	Alexis		Valencia	Largache

327	Maria	Ernestina	Valencia	Terán
328	María	Clementina	Valencia	Terán
329	Maryelis		Valencia	Terán
330	Walter		Valencia	Largacha
331	Yerlin		Valencia	Terán
332	Duber	Arley	Velásquez	Páez
333	Marco	Fidel	Velásquez	Ulloa
334	Luis	Mariano	Velásquez	Valencia
335	Bernardo		Vivas	Mosquera
336	Edwin	José	Vivas	Londoño
337	Ana	Fadit	Waldo	Mosquera
338	Leidys	Vanesa	Waldo	
339	Jovita	Del Carmen	Yanez	G.
340	Nilson		Zalazar	Quinto
341	Yajaira		Zalazar	Córdoba

ANNEX II. DISPLACED CHILDREN

Displaced children					
	Names and surnames				Date of birth ***
1	Félix	Antonio	Berrio	Berrio	07/08/1995
2	Rosa	Albina	Berrio	Berrio	No information available
3	Yisela		Mosquera		01/05/1990
4	Víctor	Alfonso	Serna	Echeverri	10/05/1989
5	Andrés	Felipe	Serna		No information available
6	Leyder		Sánchez	Mosquera	20/7/1989
7	Weimar		Mendoza	Sánchez	01/12/1984
8	Luz	Estela	Chaverra	Salazar	23/7/1986
9	Esneider		Perea	Mosquera	08/08/1994
10	Vilma		Perea	Mosquera	21/1/1996
11	Yilber		Sánchez	Mosquera	25/2/1996
12	Elmer	Luis	Mosquera	Mosquera	18/6/1993
13	Jhonnis		Mosquera		15/4/1995
14	Leyton		Mosquera	Mosquera	06/07/1987
15	Yarlenis		Palacio	Pacheco	09/04/1990
16	Andrés		Mosquera	Hurtado	No information available
17	Esomina		Murillo	Palacio	14/6/1979
18	Gelver	Andrés	Mena	Mosquera	26/6/1995
19	Yasira		Mosquera	Córdoba	31/6/1991
20	José		Córdoba	Palacio	19/3/1980
21	Luz	Mila	Mosquera	Palacio	20/1/1980
22	Alejandro		Palacio	Mosquera	28/2/1988
23	Nuvis		Osario	Sánchez	16/10/1991
24	Yerlin		Valencia	Terán	08/01/1994
25	Maryelis		Valencia	Terán	06/05/1996
26	Jhone		Perea	Martínez	18/10/1980
27	Jacinto		Medrano	Pareja	09/10/1989
28	Onasis		Medrano	Pareja	29/6/1992
29	Umbelina		Medrano	Pareja	03/09/1994
30	Natalio		Medrano	Pareja	23/10/1995
31	Januar		López	Julio	14/4/1984
32	Álvaro	Javier	Osorio	Sánchez	22/12/1995
33	Neyi		Osorio	Sánchez	29/5/1993
34	Gleyna		Medrano	Romero	11/02/1992

*** The names for which there is no information available were identified as minors at the time of the displacement by the representatives and not contested by the State.

35	Jader		Medrano	Romero	07/11/1993
36	Indira		Medrano	Romero	28/3/1995
37	Marbel		Medrano	Romero	No information available
38	Lilia		Medrano	Romero	14/11/1979
39	Raquel		Mosquera	Palacios	18/3/1979
40	María	Derlin	Palacio	Mosquera	13/11/1995
41	Eduar		Ramirez	Mosquera	No information available
42	Erika		Sureliz	Palacio	21/5/1989
43	Didier		Olguín	Rivera	08/03/1990
44	Jorge	Luis	Holguín	Rivera	No information available
45	Luis	Hernán	Olguín	Rovira	08/03/1994
46	Taylor		Mena	Mosquera	21/2/1997
47	Jhon	Jader	Mosquera	Palacio	24/3/1991
48	Deysi		Mosquera	Palacio	23/2/1995
49	Arley		Mosquera	Palacios	11/06/1996
50	Weimar		Perea	Palacios	25/2/1987
51	Gloria	Luz	Martínez	Ramo	30/3/1991
52	Farney		Murillo	Martínez	18/1/1996
53	Marilenis		Romaña	Palacios	26/12/1987
54	Glenis		Mosquera	Valois	17/10/1997
55	Gloria		Mosquera	Palacio	12/02/1982
56	Jar	Leider	Pérez	Julio	24/9/1994
57	Carlos	Mario	Matías	Meléndes	12/01/1986
58	Aura		Mosquera	Mosquera	13/8/1983
59	Diover		Mosquera	Palacio	28/8/1992
60	Lenis		Ávila	Bautista	12/02/1987
61	Yisela		Chaverra	Zalazar	11/06/1995
62	Bencol		Chaverra	Zalazar	06/08/1993
63	Yeffer		Chaverra	Zalazar	10/03/1988
64	Dayver	Javier	Mena	Pérez	28/3/1994
65	Dayner	Rafael	Mena	Pérez	26/1/1996
66	Yurley		Mosquera	Palacios	10/08/1987
67	Luz	Nivelly	Palacios	Murillo	08/06/1990
68	Jhon	Alvis	Palacios	Murillo	11/07/1994
69	Angel	Tulio	Palacios	Murillo	16/2/1997
70	Alex	Yefferson	Moreno	Mosquera	06/11/1983
71	Mariela		Palacios		25/10/1991
72	Ana	Rosiris	Palacio	Palomeque	14/10/1982
73	Wilmar		Palacios	Palomeque	No information available

74	Alex	Perea	Palacios	03/02/1996	
75	Fredy	Mendoza	Sánchez	18/11/1986	
76	Yesica	Paola	Palacios	27/1/1992	
77	Samir	Hinestroza	Ramirez	11/08/1993	
78	Elis	Yesenis	Palacios	Mosquera	15/6/1987
79	Diana	Patricia	Palacios	Murillo	23/9/1980
80	Carlos	Andrés	Rivas	Palacios	06/03/1996
81	Juan	Carlos	Cuesta	Miranda	06/03/1982
82	Yasira	Palacio			15/10/1996
83	Juan	Carlos	Cuesta	Miranda	06/03/1982
84	Yaduvís	Córdoba	Córdoba		26/2/1986
85	Henrry	Angulo	Martínez		13/9/1980
86	Jorge	Eliecer	Ávila	Moreno	04/09/1996
87	Delis	Ávila	Moreno		05/11/1988
88	Eminto	Orejuela	Quinto		12/06/1984
89	Deiner	Quinto	Mosquera		No information available
90	Waderson	Quinto	Mosquera		20/1/1994
91	Yiverson	Quinto	Mosquera		30/1/1997
92	Nesman	Orejuela	Waldo		05/07/1983
93	Martin	Emilio	Martínez	Valderrama	30/11/1982
94	Ingris	Johanna	Orejuela	Mosquera	04/08/1980
95	Ana	Bertilde	Berrio	Mosquera	11/11/1980
96	Jarlenson	Angulo	Martínez		21/8/1986
97	Mónica	Orejuela	Quinto		22/6/1995
98	Ferley	Ávila	Quinto		03/02/1988
99	Erika	Orejuela	Quinto		09/10/1988
100	Jany	Orejuela	Quinto		13/11/1990
101	Jhon	Alexander	Rivas	Blandon	No information available
102	Walter	Valencia	Largacha		28/10/1994
103	Alexis	Valencia	Largache		16/12/1996
104	Leidys	Vanesa	Waldo		07/03/1996
105	Edwin	Orejuela	Quinto		23/8/1986
106	Gloribel	Angulo	Martínez		03/02/1986
107	Ledis	Patricia	Orejuela	Quinto	23/11/1986
108	Edilsa	Angulo	Martínez		12/05/1996
109	Carmelina	Moreno	Álvarez		19/6/1988
110	Edilberto	Furnieles	Páez		22/1/1987
111	Yader	Palacios	Mosquera		04/08/1990
112	Duber	Arley	Velásquez	Páez	22/3/1995
113	Edilson	García	Páez		15/1/1992
114	Yajaira	Zalazar	Córdoba		13/10/1989

115	Robinson		Largacha	Casade	28/12/1983
116	Yaisi	María	Quinto	Mosquera	20/11/1984
117	Yeison		Mosquera	Mosquera	09/04/1989
118	José	Wilton	Orejuela	Mosquera	15/7/1985
119	Genier		Orejuela	Quinto	10/10/1988
120	Nilson	Manuel	Matía	M.	15/5/1985
121	Henodiz		Medrano	Díaz	20/1/1986
122	Onny	Livis	Gómez	Ávila	12/01/1991
123	Alexander		Gómez	Ávila	15/2/1993
124	Carolina		Herrera	Gomez	31/3/1996
125	Francisco	Miguel	Matía		19/7/1993
126	Wilberto		Mogrovejo	M.	18/3/1994
127	Carmen	Edith	Acosta	Matias	12/03/1993
128	Mileydis		Acosta	Matia	03/06/1996
129	Viviana		Palacio	Mosquera	15/8/1996
130	Luis	Alexis	Murillo		15/9/1991
131	Luz	Surely	Murillo		15/4/1996
132	María	Del Carmen	Gómez		11/11/1980
133	Deysy		Ávila	Álvarez	27/11/1996
134	Walter		Salazar	Ganboa	04/04/1988
135	Deivis		Moreno	Quejada	29/2/1988
136	Ivan	Andrés	Moreno	Moreno	12/07/1989
137	Eugenia		Mena	Blandón	31/12/1983
138	Yuber		Mosquera	Mosquera	10/02/1985
139	Erdin		Mosquera	Mosquera	16/9/1989
140	Osme		Mosquera	Mosquera	17/1/1992
141	Yusenis		Mosquera	Mosquera	25/10/1995
142	Herlenson		Palacios	Palacios	4/11/1993
143	Libia	Luz	Palacios	Palacios	8/7/1995
144	Jhon	Fredy	Palacio	Palacio	No information available
145	Yulis	María	Hinestroza	Mosquera	15/9/1985
146	Alberto		Hinestroza	Mosquera	25/1/1987
147	Arinson		Hinestroza	Mosquera	12/08/1988
148	Aristarco		Hinestroza	Mosquera	06/04/1990
149	Aurelina		Hinestroza	Mosquera	19/1/1993
150	Alerson		Hinestroza	Mosquera	09/01/1995
151	Juan	David	Vivas	Blandón	18/8/2000
152	Farleys		Palacios	Pacheco	31/7/1985
153	Paola	Andrea	Valderrama		25/12/1994
154	Miguelina		Murillo	Palacios	18/2/1981
155	Ledy		Mosquera	Mosquera	24/9/1984

156	Yhan	Carlos	Mosquera	Palacios	23/10/1996
157	Jhon	Jairo	Chaverra	Salazar	14/1/1983
158	Carmen		Sanchez	Mosquera	24/10/1989
159	Ferley		Mendoza	Sanchez	18/11/1986
160	Yonier		Palacios	Mosquera	23/9/1986
161	Baldoino		Chaverra	Salazar	24/1/1985
162	Escarlet		Lopez	Julio	02/03/1987
163	Luz	Farley	Murillo	Palacios	08/06/1987
164	Luz	Dari	Chaverra	Salazar	03/07/1986
165	José	Jimmy	Palacios	Palacios	14/1/1983
166	Emperatriz		Gómez	Ávila	12/01/1987
167	Maryuri		Bautista	Perez	17/6/1993
168	Neider	Camilo	Bautista		09/10/1996
169	Diober		Giraldo	Marquez	26/5/1986
170	Oswaldo	Miguel	Martínez	Ramos	02/09/1994
171	Arley	Miguel	Martínez	Ramos	04/12/1996
172	Marcilia	Del Carmen	Sierra	Perez	No information available
173	Luz	Nelly	Copete	Mosquera	14/10/1993
174	Angie		Copete	Mosquera	No information available
175	Marinelly		Mosquera	Murillo	20/8/1995
176	Maria	Nellys	Mosquera	Murillo	12/02/1994
177	Feliberto		Avila	Moreno	24/1/1980
178	José	Ever	Quinto	Orejuela	07/04/1982
179	Marcilia	Del Carmen	Sierra	Perez	No information available
180	Juan	Manuel	Sierra	Perez	14/11/1986
181	Arley		Avila	Correa	06/03/1994
182	Yecely		Avila	Correa	06/01/1996
183	Gladys	Helena	Moreno	Alvarez	26/12/1995
184	Dairon		Renteria	Moreno	13/8/1996
185	Mariluz		Mena	Blandón	15/5/1979
186	Ana	Rosa	Pérez	Argumedo	No information available
187	Maryleicy		Mena	Blandon	23/5/1991
188	Luis	Fernando	Bautista	Perez	No information available
189	Luz	Deisy	Bautista	Perez	No information available
190	Miguel		Mosquera	Mosquera	No information available
191	Juan	Sebastian	Martinez	Sanchez	30/10/1988
192	Jhon	Fredy	Mosquera	Murillo	20/4/1985
193	Jhohana		Perez	Julio	31/12/1983

194	Yernis	Eneida	Murillo	Caicedo	30/9/1987
195	Yadiris		Mosquera	Potes	03/05/1985
196	Luis	Heladio	Mosquera	Murillo	30/12/1982
197	Cleyber		Mosquera	Murillo	15/12/1980
198	Duvan		Ramirez	Lopez	No information available
199	Mercy	Yarnile	Palacion	Mosquera	26/5/1981
200	Yanelly		Orejuela		06/06/1984
201	Maria	Ernestina	Valencia	Terán	No information available
202	Isaias		Leon	Cuadrado	No information available
203	Ledis		Mosquera		No information available

ANNEX III. CHILDREN BORN WHILE THEIR MOTHERS WERE DISPLACED

Children born while their mothers were displaced				
1	Never	Rusne	Berrio	
2	Juan	Carlos	Mosquera	Mosquera
3	Camila	Alejandra	Dávila	Murillo
4	Lidia	Marina	Mena	Mosquera
5	Yeliza		Córdoba	Mosquera
6	Nelsi		Osorio	Sánchez
7	Jhonys		Ramo	Medrano
8	María	Julia	Palacio	Murillo
9	Juan	Pablo	Murillo	Martínez
10	Leysi		Márquez	Giraldo
11	Juan	David	Ibarguen	
12	Glenis		Mosquera	Palacio
13	Maryuri		Mendoza	Mosquera
14	Orledis		Mosquera	Murillo
15	Yurleydis		Ávila	Moreno
16	Jaider	Enrique	Martinez	Berrio
17	Yesmin	Adriana	Martinez	Berrio
18	Jonny		Murillo	Largache
19	Yuliana		Mosquera	Mosquera
20	Juan	Carlos	Mosquera	Moya
21	Leyder	E.	Matia	
22	Leonardo		Murillo	
23	Maria	Teresa	Ávila	Álvarez
24	Lorena		Valderrama	
25	Bibier		Mosquera	Palacio
26	Felix		Yanez	Guevara

27	James	Andres	Murillo	Caicedo
28	Jhon	Edison	Rivas	Palacios
29	Luz	Adriana	Mosquera	Murillo
30	Helber		Avila	Rubio
31	Viviana	Patricia	Cantero	Sierra