

# AN ABC ABOUT THE SECOND JUDGMENT REGARDING THE DETERMINATION OF FACTS AND CONDUCTS ON CASE 003 - SUBCASE COSTA CARIBE

28 de octubre de 2021

## 1 A closer look at the judgment

### 1 What is Judgment No. 128 of 2021 about?

JEP's Chamber of Recognition issued its Judgment No. 128 of 2021 in which it charged 15 members of the National Army with war crimes and crimes against humanity (two lieutenant colonels, three majors, one lieutenant, two sub lieutenants, two sergeants of the first degree, one lower sergeant, a soldier of the third degree and three professional soldiers), by virtue of their alleged participation in the murder of 127 persons in Northern Cesar and Southern La Guajira, within subcase Costa Caribe.



The Chamber indicated in its Judgment that the Wiwa and Kankuamo indigenous peoples suffered serious, differentiated and disproportionate harm, which was allegedly perpetrated by certain members of Artillery Battalion No. 2 La Popa (BAPOP), between 9 January 2002 and 9 July 2005.

### 2 What was the methodology used by the Chamber of Recognition?

By 31 May 2021\*\*, JEP had received 405 statements provided by persons who appeared before it, and carried out 5 proceedings to reconstruct the truth, promote interjurisdictional coordination and intercultural dialogue in the context of this general case. Moreover, 1005 individual victims have been certified.

## 2 A closer look at the context

### 1 What were the methods applied by the alleged criminal organization that participated in the killings and enforced disappearances presented as casualties of war?

#### ✓ Allegedly, there was a criminal organization within BAPOP which took advantage of the institutional structure

"The existence of the criminal organization specifically allowed the phenomenon to persist and become consolidated as a practice within the unit, regardless of changes in personnel and circumstances" (p. 41):

↳ This criminal organization was allegedly established de facto by the commander of BAPOP, Mr. Mejía Gutiérrez, in partnership with paramilitary forces. That criminal organization was later put into place and kept operating, according to the allegations, after the appointment of Mr. Figueroa Suárez as the commander of BAPOP.

#### ✓ This criminal organization was supported by a mutually beneficial alliance with paramilitary forces in its first stages

According to the allegations, there was an alliance between certain members of BAPOP and the Mártires del Cesar paramilitary Front, which belonged to the Northern Block of AUC. That alliance was possible because BAPOP officers concluded that "paramilitary forces were not the enemy who had to be confronted, as were the guerrillas, thus they could work in harmony against their common enemy" (p. 42).

↳ In order to form and maintain this alliance, it was important for certain members of the security forces to perform a "double duty", and also "take part in paramilitary groups, so as to build communication channels and facilitate the relationship between those groups and members of the Army" (p. 44).

#### ✓ Several factors contributed to the weakening of the alliance between certain members of BAPOP and the paramilitary over time

Upon the arrival of Mr. Figueroa Suárez in the battalion and the gradual transformation of the AUC fronts in the territory, the alliance that was previously consolidated between the paramilitary and certain BAPOP officers continuously weakened. Therefore, the goal of the criminal plan and the motivation within various ranks of the Armed Forces to take part in it steadily changed.

#### ✓ A division of the criminal tasks and related logistics was created in order to make the criminal organization operate

According to the evidence examined by the Chamber, the criminal organization involved several members who had the legal capacity to give orders (battalion commanders, operational officers, platoon leaders); and subordinates who had the legal obligation to comply with those orders.

#### ✓ The variety of resources and means at the disposal of BAPOP enabled the occurrence of murders and their portrayal as fake operational results

In the opinion of the Chamber, some BAPOP officers allegedly used public resources which were assigned to the fulfilment of their constitutional duties in order to accomplish general criminal patterns. Those included guns, ammunition, logistical resources and time worked by the members of the military unit.



According to the Judgment, out of the 199 casualties reported by BAPOP between January 2002 and July 2005, 73 were actual casualties of war, while 126 were murders unrelated to combat. "Out of these 199 casualties, 86 were reported during Mejía Gutiérrez' command, and 75 of these were illegitimate killings (87%); while 113 took place during Figueroa Suárez' command, and 51 of these were illegitimate killings (45%)" (p. 38).

*\*The sections in quotation marks correspond to a free translation of the original decision in Spanish.*

For more information:  
[www.observajep.com](http://www.observajep.com)



ObservaJEP



@ObservaJEP



ObservaJEP



ObservaJEP

# AN ABC ABOUT THE SECOND JUDGMENT REGARDING THE DETERMINATION OF FACTS AND CONDUCTS ON CASE 003 - SUBCASE COSTA CARIBE

20 de febrero de 2021

## 2 Which general criminal patterns were identified by the Chamber?

The Chamber identified two general criminal patterns:

### FIRST PATTERN - Murder of civilians who were accused of being enemy combatants, often with the support of the paramilitary

The Chamber identified **4** modalities which characterize the first general criminal pattern:

- 1 Alleged agreement between the command of BAPOP and members of AUC for handing over persons who were illegitimately presented as casualties of war.
- 2 Murder of defenseless persons who were accused by guides and informants of belonging to or aiding the guerrillas.
- 3 Murder of persons allegedly related to illicit acts.
- 4 Murder of persons who were out of commission due to either injury or surrender.

### SECOND PATTERN - Murder of civilians unrelated to combat in order to maintain the figures of operational results.

The second general criminal pattern was intensified by **2** factors:

- 1 The arrival of commander Juan Carlos Figueroa Suárez, in January 2004.
- 2 The paramilitary demobilization and the resulting termination of the alliance between BAPOP and members of that armed group.

The Chamber identified **2** modalities which characterize the second general criminal pattern:

- 1 Retention of civilians at control posts placed on highways, surveillance and military control operations.
- 2 Selection of vulnerable victims in Valledupar and Barranquilla, who were relocated by means of deceit, then killed and presented as casualties of war.

Members of several BAPOP platoons allegedly searched for their victims among persons whom they imagined would not be missed by others, such as persons associated with criminality, homeless persons, frequent drug users and informal workers.

This general criminal pattern followed the logic related to pressure for results, and aimed at safeguarding the reputation of the Battalion. Said pressure was allegedly exerted by commanders, direct superiors and high-ranking officials.

#### Examples of means of pressure identified by the Chamber

- ✓ Threats to discharge military officers or charge them with crimes in case they did not produce the expected results (p. 107).
- ✓ “Explicit” pressure to produce “casualties of war broadcast through radio programs” (p. 106).
- ✓ In case someone was captured, the explicit or implicit order was to kill them and present them as a casualty of war (p. 108).
- ✓ The commanders were forced to sign documents in which they committed to present a certain number of casualties, regardless of the realm of responsibility of their troops (p. 110).

#### Examples of incentives identified by the Chamber

- ✓ Certificates and compensation to those who presented casualties of war (p. 113).
- ✓ The troops perceived presenting casualties of war as a means to obtain removal from a combat zone (p. 115).
- ✓ Payments related to the armaments which were planted on the persons presented as casualties of war (p. 118).
- ✓ Stimuli such as street names, public congratulations, among others (p. 119).

## 3 Which circumstances contributed to covering up the patterns described in the Judgment?

On the basis of the previously described patterns, the Chamber documented various situations which allegedly allowed the participants to cover up these facts:

- ✓ Fabrication of BAPOP operational documents based on false information by platoon leaders and high-ranking officers (p.132).
- ✓ Removal of the victims' corpses by military officers in the absence of judicial police authorities, which prevented the facts from being duly investigated (p.143).
- ✓ Concealment of the victims' identities and reporting them as unidentified, as well as destroying their identity documents (p.139).
- ✓ Simulation of hostilities by members of the troops, in order to lead the community to believe they were battling armed groups (p.150).
- ✓ Planting weapons, ammunition and warfare material on the victims, in order to validate that there was a confrontation (p.146).
- ✓ Lack of an adequate investigation about the deaths by the Military Justice System (p.155).

## 4 What were the damages suffered by the victims and their family members?

The Chamber stressed that the damage caused to the victims not only included violations of individual assets, but also generated material and immaterial harm, a sensation of impunity, and family rupture after their loved ones were gone.

Moreover, the Chamber concluded that some of the victims in this case were members of indigenous communities, women, children and especially vulnerable persons.



The Chamber applied a differentiated perspective in order to analyze the impact of the events and the vulnerability of the victims, which were considered by the perpetrators when committing the crimes.

For more information:  
[www.observajep.com](http://www.observajep.com)

# AN ABC ABOUT THE SECOND JUDGMENT REGARDING THE DETERMINATION OF FACTS AND CONDUCTS ON CASE 003 - SUBCASE COSTA CARIBE

## 1 Impact on the Wiwa and Kankuamo Indigenous Peoples

✓ The Chamber established that, “the impact on the indigenous peoples in Case 003 encompasses harm of a multidimensional character which affects their ways of life and cosmovision, as well as the intrinsic and reciprocal relations they have with their territory” (p.168).

- The victims who were members of the Kankuamo People “represent a little over 7% of the totality of victims recognized by the Chamber. Nevertheless, the true dimension of their victimization only becomes clear if one considers that this group is a minority in Cesar, since Kankuamos do not amount to even 1% of the population of said department” (p.169). Many of these victims were detained in their own territories or at their homes, and then murdered.
- According to the Chamber, the murders perpetrated against members the Wiwa and Kankuamo Indigenous Peoples by BAPOP officers “took place during the implementation of institutional measures aimed at protecting the indigenous communities of Sierra Nevada de Santa Marta in the context of the armed conflict” (p. 171).

✓ Based on the principles adopted by JEP regarding an ethnic, differentiated, dialogical and intercultural perspective, the Chamber determined that the harm suffered by the indigenous communities comprises a violation of their principles and projects of life. Accordingly, the Chamber recognized that said harm included:

- **Harm to their memory and good name:** This damage prolongs itself over time, and entails horizontal and intergenerational violations against the family nucleus, “every time an accusation prevents survivors to free themselves from the stigma which was placed on their family members” (p.176).
- **Harm to their cultural integrity:** This kind of damage occurs due to the loss of life of members of the indigenous peoples, which is related to the individual harm causing physical, material, psychological and spiritual impacts.
- **Loss of the enjoyment of their territory:** This loss made it impossible for them to inhabit their places of creation of knowledge, such as sacred sites, and contributed to the “deterioration of their leisure activities, which are fundamental for the wellbeing and social interaction of the communities” (p.180).
- **Harm to the health of the victims’ family members:** This damage can be demonstrated through the increase in cardiovascular diseases or diabetes within the communities, as well as strong sleep disorders, insomnia and cases of depression.
- **Harm to children and youth:** The Chamber ascertained, based on the evidence, that three victims of killings illegitimately presented as casualties of war were between the ages of 13 and 18.
- **Harm to the institutional legitimacy:** The Chamber found that these actions deteriorated the trust which was placed on State authorities by the Indigenous Peoples. Several victims who were members of these peoples started feeling insecurity and panic upon seeing Army soldiers.
- **Harm to the future of individuals and nuclear families, as well as to the future of the collectivity:** The integrity and longevity of their culture “depend on enjoying the necessary conditions to maintain their particular forms of life in times to come” (p.178). This also entails the loss of harmony within the community and a violation against these peoples.
- **Harm to indigenous women:** The Chamber verified harm to the cultural integrity, which affected the roles, forms of childbearing, transmission of knowledge and reproduction of their culture. For instance, youths “were used as informants, which led to harm associated with stigmatization and the resulting forms of violence that might put their lives at risk” (p.181).

## 2 Women and girls were among the victims of these actions

The Chamber acknowledged that both women and girls have had to endure violence aimed at “reminding them of their presumed inferior place in society if compared to men, and punishing any behavior that might be considered as a transgression or contradiction of this social order” (p.184).

## 3 Adolescents

The Chamber concluded that children and adolescents have especially suffered the impacts of the violence during the armed conflict. They have endured orphaning, sexual violence, forced recruitment, and forced displacement.

## 4 Persons with cognitive disabilities

The Chamber concluded that, at least in one case, one of the victims was chosen because of their vulnerable situation related to living with a cognitive disability. Accordingly, the deliberate manipulation or instrumentalization of persons with cognitive disabilities demonstrates “the harm associated with the idea that persons with disabilities are expendable in society” (p.191).

# 3 A closer look at criminal responsibility

The Chamber’s juridical classification was done in conformity with International Humanitarian Law, International Criminal Law, International Human Rights Law and domestic criminal law. It also applied said legal framework according to the principle of legality in its traditional notion, which requires a previous, precise, strict and written law.

## 1 Crimes perpetrated according to the Judgment

→ The Chamber carried out a two-fold examination of the conducts, thus it qualified them according to both domestic criminal law and international criminal law.

✓ With regard to domestic law, the Chamber indicated that the following crimes were possibly perpetrated:

**Murder against a protected person (Article 135 of the Criminal Code)**

- ✓ BAPOP officers allegedly killed 127 persons.
- ✓ The murders took place during the armed conflict; the alleged perpetrators took advantage of the resources, armaments and their official capacity as members of the National Army.
- ✓ All 127 victims were civilians who were not participating in hostilities or bearing weapons.

**Enforced disappearance (Article 165 of the Criminal Code)**

- ✓ The alleged perpetrators used various methods for depriving the victims of their liberty, such as entering into agreements with paramilitary groups.
- ✓ The alleged perpetrators intended to conceal 121 persons in order to present them as casualties of war who could not be identified.

For more information:  
www.observajep.com



ObservaJEP



@ObservaJEP



ObservaJEP



ObservaJEP

# AN ABC ABOUT THE SECOND JUDGMENT REGARDING THE DETERMINATION OF FACTS AND CONDUCTS ON CASE 003 - SUBCASE COSTA CARIBE

## With regard to international criminal law, the Chamber found that the following crimes were perpetrated:

### War crime of murder

- ✓ The crimes were perpetrated during an armed conflict.
- ✓ The conducts violated Common Article 3 common of the Geneva Conventions, and fit the description of Article 8.2.c.i of the Rome Statute.
- ✓ Since the 1990s, according to international law, it is possible to attribute individual criminal responsibility for murder against a protected person.

### Crimes against humanity of murder and enforced disappearance

- ✓ The conducts were not isolated. All crimes are closely related to two instructions: 1. Eliminate the enemy and present casualties. 2. Produce those casualties at any cost.
- ✓ These deaths illegitimately presented as casualties of war fluctuated between 46% and 87% of the sum of operational results.



Some crimes were perpetrated as early as 9 January 2002, when the Rome Statute was still not in force for Colombia. Nevertheless, the Chamber concluded that those crimes were already part of customary international criminal law.

## 2 Who was charged with those crimes?

The Chamber identified the following persons as the alleged main perpetrators of the actions taking place between January 2002 and July 2005, in the course of BAPOP operations:

### Perpetrators-by-means who had control over the organized power apparatus

- ✓ Publio Hernán Mejía Gutierrez
  - ✓ Juan Carlos Figueroa Suárez
- They allegedly gave orders, and had the authority to control the criminal organization and the direct perpetrators who were replaceable.

### Co-perpetrators

The Chamber identified the following persons as participants in the criminal organization, who shared a common purpose according to a functional division, and allegedly carried out relevant activities in the execution of the crimes:

- ✓ José Pastor Ruiz Mahecha
  - ✓ Guillermo Gutiérrez Riveros
  - ✓ Heber Hernán Gómez Naranjo
  - ✓ Efraín Andrade Perea
  - ✓ Manuel Valentín Padilla Espitia
  - ✓ Eduart Álvarez Mejía
  - ✓ Carlos Andrés Lora Cabrales
  - ✓ José de Jesús Rueda Quintero
  - ✓ Elkin Burgos Suárez
  - ✓ Juan Carlos Soto Sepúlveda
  - ✓ Yeris Andrés Gómez Coronel
  - ✓ Alex José Mercado Sierra
  - ✓ Elkin Rojas
- He allegedly conceived the modus operandi of the Zarpazo and Trueno groups, trained his troops to carry out criminal acts and participated in the alliance with the Northern Block of AUC.
- He allegedly commanded and led the operations in which the crimes examined in the Judgment took place, was aware and participated in the alliance with the AUC.
- He allegedly participated in the alliance with the AUC and collaborated in the cover-up of the crimes.
- He allegedly participated in the logistics required for the execution of the crime and took part in their cover-up.
- He allegedly acted as the intermediary with the paramilitary, took part in setting up the logistics required for the execution of the crimes and participated in the cover-up.
- He allegedly directed operations, substantially contributed to the development of the criminal plan as the commander of the Zarpazo Special Platoon and participated in the cover-up.
- According to the allegations, he substantially contributed to the development and design of the first pattern established by the Chamber, and adhered to the alliance with the AUC.
- He allegedly participated in the alliance with the AUC, coordinated actions and ordered subordinates to execute and cover up the crimes; as well as plant armaments on the victims.
- He allegedly promoted the perpetration of the crimes, relayed false information, assigned tasks and instructed the soldiers under his command regarding the statements they were supposed to present before the Military Justice System; he also unduly influenced the Kankuamo people creating stigmatization.
- He allegedly murdered several victims, acted as a liaison with the AUC and reproduced the modus operandi to new platoon commanders.
- He allegedly murdered civilians, and participated in joint and coordinated operations with the AUC; also took part in the cover-up and reproduction of the modus operandi.
- He allegedly murdered eight defenseless persons, and recruited victims who were later murdered.
- He allegedly coordinated, planned and carried out murder of civilians.

## 4 A closer look at the procedure: What will happen next in Case 003?

Accredited victims in Case 003 may present an appeal within 3 days. Once the Judgment becomes final, the accredited victims shall present their observations regarding this decision within 30 days. The Chamber shall then evaluate whether those observations need to be submitted to the person charged before summoning a recognition hearing.

### Those respondents who were individualized and identified in the Judgment may:

- ✓ Present an appeal.
- ✓ Express their recognition of truth and individual responsibility before the Chamber, in writing. If they do so, the Chamber of Recognition shall convene a recognition hearing, with the participation of the victims.
- ✓ Deny their individual responsibility. If they do so, the Chamber shall submit the matter to the UIA regarding the facts and conducts that were not acknowledged.
- ✓ Acknowledge their individual responsibility regarding some facts, while denying it regarding others. In this instance, the procedure will be ruptured, and the respective facts shall be processed accordingly.



[CLICK HERE FOR THE FULL TEXT OF THE CAPSULE IN SPANISH](#)



For more information:  
[www.observajep.com](http://www.observajep.com)



ObservaJEP



@ObservaJEP



ObservaJEP



ObservaJEP