

# ABC ABOUT THE FIRST DECISION REGARDING THE DETERMINATION OF FACTS AND CONDUCTS ON CASE 003 - SUBCASE CATATUMBO

## 1 A closer look at the judgment

On July 2nd, 2021, the JEP's Chamber of Recognition issued its decision No. 125 of 2021, in which it acknowledged that war crimes and crimes against humanity were probably perpetrated by 11 persons who appeared before JEP, because of their alleged main participation in the killing and enforced disappearance of at least 120 defenseless persons in Catatumbo (located in Norte de Santander). Those crimes were all illegitimately presented as casualties of war taking place between January 2007 and August 2008, with the aim of increasing the official statistics of military success\*.

### 1 What is Case 003 about?

Case 003 deals with the investigation of killings which were illegitimately presented as casualties of war taking place during combat between 2002 and 2008. Moreover, in its Judgment No. 033 of 2021, JEP recognized that [at least 6.402 persons](#) were illegitimately presented as casualties of war during the period between 2002 and 2008.

### 2 Some of the main antecedents of this judgment:

- ✓ In its decision No. 005 of 2018, the Chamber claimed its jurisdiction over Case 003 regarding “illegitimate killings presented as casualties of war perpetrated by State agents”.
- ✓ In its decision No. 033 of 2021, the Chamber publicized its internal prioritization strategy. This strategy consisted of prioritizing six regions (Antioquia, Costa Caribe, Norte de Santander, Huila, Casanare and Meta), which allowed for the combination of individual cases according to criminal patterns that were established upon cross-referencing various factors (temporal, geographical, and the characteristics of the victims), and focusing the investigative efforts on the determination of the main perpetrators.

## 2 A closer look at the context

According to the Chamber, the killings fit into an alleged general criminal pattern which aimed at: (i) responding to the pressure related to casualties “that took place at any cost” and keeping Battalion Santander (BISAN) and Mobile Brigade No. 15 (BRIM15) among the most effective at the national level and, additionally (ii) obtaining incentives supported by the specific disciplinary regimen of the military forces – based on Article 21 of Law No. 826 of 2003 – which established the superior duty of “stimulating those who excel at fulfilling their duties”.

### 1 Which circumstances influenced the consolidation of the alleged pattern?

In order to determine the general criminal pattern, the Chamber established that territorial, institutional and strategic factors were decisive for its shaping. In addition, those factors made it possible to understand the causes of the illegitimate killings presented as casualties of war.

#### ✓ Territorial factors

- The events took place in the region of Catatumbo, which is a strategic area “since it is located at the border with Urabá, Magdalena Medio and the Republic of Venezuela” (p.17).
- Several groups, such as ELN, FARC-EP, EPL, as well as paramilitary groups, were present in the area. This led to the increment of “the military power in the region by means of the creation of BR30, which included BISAN and BRIM15” (p.19).
- The nonexistence of direct military confrontations between the National Army and the armed groups in the zone was a determining factor inside the territory. Additionally, factors such as militarily difficult to attack the guerrilla that was confined in the mountains, and agreements that allegedly took place between some members of the State security forces and paramilitary groups post-demobilization, were decisive territorial factors that contributed to the pattern.
- There was some level of stigmatization within BRIM15 and BISAN regarding peasants who resided in Catatumbo, in the sense that they were guerrilla members, guerrilla supporters, or else served as bases for the guerrillas. This “aversion” was, to some extent, incited by the military training schools themselves.

#### ✓ Institutional factors

- The killings were allegedly supported by a series of official decisions which were adopted by the military forces. Therefore, some actions were taken, such as: (i) deployment of troops to the place where the killings took place, and (ii) reporting casualties during combat and covering these up as a result of the operations carried out in the zone.
- The conducts that were perpetrated allegedly followed operational procedures which were authorized by their superiors.
- The operational decisions in Catatumbo were allegedly made at the Ocaña military headquarters by the commanders of BISAN and BRIM15, as well as by some Unit leaders and Higher Officials.

#### ✓ Strategic factors

The Chamber concluded that alleged acts of pressure were forged from within the military forces by military commanders towards their subordinates, as a strategy to commit these crimes. The main acts of pressure allegedly exerted over the subordinates included:

- ✓ Permanently and systematically demanding casualties or killings during combat.
- ✓ Implementing a policy of incentives which consisted of awards or rewards on behalf of the military units that reported the most killings during combat.
- ✓ Systematically promoting a competition among units according to a statistical record of reported killings during combat.
- ✓ Threats and actions of destitution, relocation, and negative review in their personal records, in case they did not fulfill the mandate.

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

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## 2 What did the general criminal pattern identified by the Chamber entail?

The Chamber established that the killings were committed according to the same criminal plan with due division of labor, in a specific territory, in the same time period:

- ✓ In most cases, the victims were young males, between the ages of 25 and 35.
- ✓ Forty-three percent of the victimizing acts took place in 2008, and Ocaña was the mostly affected municipality.
- ✓ Sixty-three percent of the actions were allegedly perpetrated by members of BRIM15.



**The Chamber determined that this general criminal pattern followed two successive modalities which primarily differ according to the profile of the victims:**

### FIRST MODALITY – Killings of residents of Catatumbo’s rural area, in order to report them as “casualties of war”:

Between 21 January 2007 and 28 January 2008, members of BRIM15 and BISAN allegedly murdered residents of Catatumbo’s rural area, and presented them as “casualties of war”. According to this first modality of the general criminal pattern identified by the Chamber, the following actions were allegedly perpetrated:

- ✓ The basic cycle of intelligence was disregarded.
- ✓ There were instances of undue pressure to carry out intelligence procedures.
- ✓ Trusted officials without experience or knowledge were appointed for these intelligence functions.
- ✓ Orders were issued to carry out fictitious operations which led to the killings of civilians.
- ✓ State authorities and Higher Officials of the units made agreements with the members of the brigade in order to define how combat would be fabricated, and how they would obtain the weapons (“legalization kit”) and other items which would be planted on the victims.

The Chamber identified three steps to be followed in the execution of the first modality of the general criminal pattern:



- 1 Retention of the victims and their placement at a previously determined spot for their execution: The victims were taken into custody through the use of force or deceit.
- 2 Simulation of combat: In order to do this, they tampered with the crime scenes and altered the environment where the killings of civilians took place.
- 3 Members of the military units used clothes and items commonly worn by combatants.

The Chamber found enough evidence about the practice according to which the investigated military units recorded false information in various types of documents related to the operations:



- ✓ Irregular fabrication of orders related to the operations and tactical missions.
- ✓ Irregular fabrication of intelligence supporting materials.
- ✓ Irregular fabrication of supporting documentation to validate payments to informants.
- ✓ Irregular fabrication of other operational reports.

The Chamber also found proof of actions intended to denote the legality of the killings of civilians and present them as casualties of war in judicial and disciplinary procedures:



- ✓ Destruction of evidence once the investigations began.
- ✓ Fabrication of narratives about false safety in the territories.
- ✓ Threats against witnesses in judicial procedures and/or those involved in the criminal plan.
- ✓ Purchase and modification of testimonies and statements during judicial and disciplinary procedures.

### SECOND MODALITY – Enforced disappearance and killing of youths who were deceived into being transferred to Catatumbo, in order to present them as “casualties of war”:

Between 6 December 2007 and 25 August 2008, civilians from other parts of the country were allegedly deceived and relocated to the sub-region of Catatumbo. They were taken into custody and later killed, in order to be presented as casualties of war. The victims were residents of the municipalities of Soacha (Cundinamarca), Bogotá, Aguachica (Cesar), Gamarra (Cesar) and Bucaramanga (Santander). According to this second modality of the general criminal pattern, third-party civilians played a decisive role in recruiting the victims.

The Chamber identified three steps to be followed in the execution of the second modality of the general criminal pattern:



- 1 *Selection of the victims, deceit and relocation to Catatumbo.*
- 2 *Retention and handover of the victims to the military units.*
- 3 *Definition of the place of the events and perpetration of the killings.*

In the opinion of the Chamber, the legalization of the killings of the youths from Soacha and other municipalities indicate a double strategy of cover-up:

#### 1. Judicial and disciplinary strategy:



- ✓ Use of the “legalization kit” which had already been refined during the first modality, and included planting weapons beside the corpses, as well as fired ammunition.
- ✓ Fabrication of false documents.
- ✓ Use of false witnesses and homogenization of versions among the members of the troops.
- ✓ Destruction of evidence and evidentiary material aimed at delaying the judicial procedures.

#### 2. Strategy of force and intimidation:



- ✓ The third-party civilians portrayed as recruiters were subjected to threats and intimidation by members of BRIM15 and BISAM, and some of them were killed.
- ✓ The members of the security forces, who denounced or wished to denounce what had taken place, died under suspicious circumstance or were threatened.
- ✓ Several family members of the victims have suffered threats and intimidation during their search for truth and justice.

#### Distinctions between the two modalities of the general criminal pattern which were identified by the Chamber:

Origin of the victims:	While the victims of the first modality were residents of Catatumbo’s rural areas, the victims of the second modality were relocated from other municipalities to that sub-region by means of deception, in order to prevent the local peasants from recognizing them.
Criteria for the selection of the victims:	According to the first modality described herein, the victims were selected due to unfounded rumors that they collaborated with the enemy. On the other hand, according to the second modality, the victims were selected and killed following a logic of social cleansing against those considered as undesirable, that is to say, according to criteria such as drug use, criminal antecedents, living with a disability, being unemployed or homeless.
Whereabouts of the victims:	According to the second modality, the family members of the victims could not find out their whereabouts, even after they were killed. The victims were disappeared in order to ensure the success of the operation.

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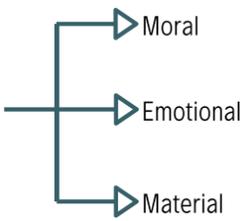


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## 3 What damages did the victims and their family members suffered?

The Chamber established that, on top of the violation of the rights to life and personal integrity of the youths who were victims of enforced disappearance and later killed, there was also serious harm to their families. Harm of the following types:



These types of harm, according to the Chamber, “shall serve to establish criteria for the recognition of truth and responsibility which might be made by those who appear before this jurisdiction and are identified in this Judgment, as well as to design adequate penalties for them,” (p.151) taking into account that the punishment imposed by JEP “shall use as criteria the harm suffered by the victims and the restorative and reparational functions of the punishment” (p. 151).

## 3 A closer look at criminal responsibility

In this decision, the Chamber made a series of clarifications which are fundamental vis-à-vis the juridical classification of these crimes:

- ✓ With regard to the members of the security forces, according to Article 22 of Legislative Act No. 01 of 2007, a certain conduct cannot be exclusively classified according to international law.
- ✓ National Law and International Law shall be applied in harmony.
- ✓ The Chamber applied the Colombian Criminal Code, and interpreted and complemented it in light of International Human Rights Law, International Humanitarian Law and International Criminal Law.

## 1 Crimes allegedly perpetrated according to the Judgment

✓ The Chamber identified that the elements of the war crime of murder against a protected person are present in this case:

- ✓ They were perpetrated by members of the State security forces.
- ✓ The perpetrators took advantage of the structure and functioning of the military organization, and used State funds to commit the conducts.
- ✓ “[B]ecause of their participation in these crimes, specific incentives of a military nature were granted” (p. 171).
- ✓ There is a link between the pressure for results in the context of the internal armed conflict and the occurrence of these crimes.

✓ The Chamber identified that the elements of the crime of enforced disappearance are present in this case, according to national law:

- ✓ Demanding that the victims do not disclose to their family members where they were being taken.
- ✓ The victims’ cell phones and identity documents were confiscated.
- ✓ The victims’ corpses were reported as unidentified or “NN”.
- ✓ The victims were taken into custody by means of deceit.

✓ The Chamber identified that the elements of crimes against humanity are present in this case

- ✓ They were allegedly perpetrated by member of the Armed Forces, taking advantage of institutional capacities and structure.
- ✓ They were allegedly committed with the same purpose, which was to comply with the strategy of counting dead bodies as the main indicator of success.
- ✓ The victims were all civilians.
- ✓ There were at least 120 victims at the hands of the military units scrutinized during the period between 2007 and 2008.
- ✓ The attack was organized, planned and coordinated, according to the analysis of the context carried out by the Chamber.

## 2 Who was charged with those crimes?

The Chamber indicated that the main perpetrators are those persons who played a special role in the criminal organization or in the general criminal pattern. Nevertheless, determining the main perpetrator implies a case-by-case examination, and said analysis shall consider – albeit not necessarily, or concomitantly:

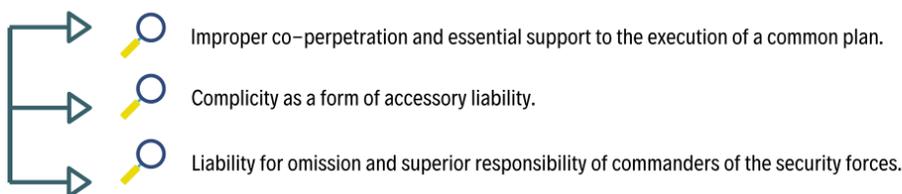
→ The leadership of the person in the criminal organization or in the general criminal pattern. Among other criteria, one should consider if the persons appearing before JEP:

- ✓ Gave the order related to the policies, expressly or implicitly.
- ✓ Defined, coordinated or formulated the illegal system in which the criminal conduct took place.

→ The decisive participation of the person in the implementation of the general criminal pattern or policy. This includes those who:

- ✓ Effectively participated in the perpetration of the especially serious and representative crimes.
- ✓ Influenced in a relevant manner the development and the configuration of the criminal policy.

## 3 Which types of criminal conduct were applied?



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

Accredited victims in Case 003 may present an appeal within 3 days. Once the decision 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 persons who were charged, individualized and identified in the decision 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.



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