

Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia¹

ABSTRACT²

This case stems from the displacement of about 3,500 Afro-descendants living in various communities in the northeast of Colombia, towards the border with Panama. The displacement was caused by an anti-guerrilla operation (Operation Genesis) carried out by the 17th Brigade of the State Army. During the operation, paramilitaries of the United Self-Defense Forces of Colombia grisly murdered Mr. Marino Lopez, one of the members of the displaced communities. Although the State prosecuted, tried, and convicted General del Río Rojas, the commander of the 17th Brigade, and compensated the displaced communities with land grants, the Court still found violation of several articles of the American Convention.

I. FACTS

A. Chronology of Events

1. Events Pertaining to the Afro-descendant Communities

October 6, 1996: Members of the Peasant Self-Defense Forces of Córdoba and Urabá (*Autodefensas Campesinas de Córdoba y Urabá*, “ACCU”), a pro-government paramilitary group,³ murder several residents of the village of Brisas de la Virgen, located between the Chocó

1. Although the case was referred to as *Marino López et al. (Operation Genesis) v. Colombia* before the Commission and before the Court, the final judgment was issued under the name *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*.

2. Zach Tripodes, Author; Sean Lask, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

3. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 90 (Nov. 20, 2013).

and Antioquia Departments of northwestern Colombia, near the Cacarica River basin.⁴

December 1996: Pro-government paramilitary groups engage in skirmishes with anti-government guerrilla forces near the municipality of Riosucio, in the Chocó Department near the Cacarica River basin.⁵

January 9, 1997: Anti-government guerrilla forces seize Riosucio.⁶

January 16, 1997: Guerrilla forces attack and kidnap ten State Marines on patrol near Riosucio.⁷

February 7, 1997: Guerrilla forces kidnap four foreigners near Riosucio.⁸

February 24, 1997: The 17th Brigade of the State Army, in conjunction with the State Air Force, commences Operation Genesis.⁹ The goal of the operation is to eliminate members of guerrilla groups operating in the Chocó and Antioquia Departments near the Cacarica River basin and to rescue the ten kidnapped Marines.¹⁰ The Army also coordinates the operation with paramilitary groups.¹¹

February 26, 1997: Members of the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, "AUC"), a pro-government paramilitary group,¹² attack the villages of Bijao, Limón, and Puente América,¹³ located in or near the Riosucio municipality of Chocó Department.¹⁴ The paramilitaries use small arms fire and grenades during their attack and also set homes on fire, causing the civilian population to

4. *Id.* ¶ 95.

5. *Id.* ¶ 96.

6. *Id.* ¶ 97.

7. *Id.*

8. *Id.* ¶ 99.

9. *Id.* ¶ 101.

10. *Id.* ¶ 100.

11. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Report on Merits, Report No. 64/11, Inter-Am. Comm'n H.R., Case No. 12.573, ¶ 127 (Mar. 31, 2011).

12. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 81.

13. *Id.* ¶ 102.

14. *Id.* ¶ 86.

flee.¹⁵ In the village of Bijao, the paramilitaries opened fire on houses and sacked civilian homes forcing locals assemble the locals to leave their homes.¹⁶

February 28, 1997–March 1997: Around 3,500 persons are displaced as a result of Operation Genesis.¹⁷ The vast majority of those displaced, about 2,230, seek refuge in the city of Turbo, in neighboring Antioquia Department,¹⁸ where they are sheltered in the town's sports arena and later in two shelters built for them.¹⁹ In Turbo, their accommodations and assistance are poor, unsanitary, and insufficient, which leads to mental and physical illnesses, a breakdown of family structures, and a loss of education opportunities.²⁰ Around seventy individuals are displaced to Bocas del Atrato, also in Antioquia Department, where they are housed in a school classroom and in locals' homes.²¹ Furthermore, 200 other individuals seek refuge across the border in Panama, where they are housed in camps, before they are deported to the State, where the government places them in a camp in Bahía Cupica, in Chocó Department.²²

December 1 – 8, 1997: Members of the Inter-American Commission on Human Rights visit the displaced persons in Turbo.²³

December 11, 1997: Two armed paramilitaries enter the stadium in Turbo looking for someone.²⁴

December 14, 1997: A paramilitary member is observed inspecting the displaced persons' accommodations.²⁵

December 17, 1997: The Commission issues precautionary measures to protect the life and personal integrity of the displaced persons in Turbo

15. *Id.* ¶ 102.

16. *Id.* ¶ 107.

17. *Id.* ¶ 111.

18. *Id.*

19. *Id.* ¶ 117.

20. *Id.* ¶ 118.

21. *Id.* ¶ 119.

22. *Id.* ¶ 120.

23. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Report on Merits, Report No. 64/11, Inter-Am. Comm'n H.R., Case No. 12.573, ¶ 153 (Mar. 31, 2011).

24. *Id.*

25. *Id.*

and Bocas del Atrato.²⁶

1998: An aid agency, Social Action, begins plans to move 418 families into improved housing, which the State helps subsidize.²⁷

January 11, 1999: The Inter-American Commission on Human Rights confirms the continuance of the precautionary measures.²⁸

April 26, 1999: The Colombian Institute for Agrarian Reform (*Instituto Colombiano de la Reforma Agraria*, “INCORA”) conveys collective lands to an organized group made of members from the displaced Afro-descendent community.²⁹

September 2, 1999: The National Directorate for the Environment presents a report revealing that a number of lumber worker encampments were on displaced individuals’ land.³⁰

December 13, 1999: The State signs an agreement that includes a number of provisions for the State to ensure the return of the communities temporarily in Turbo.³¹

December 15, 1999: During a signing ceremony in the Turbo stadium, INCORA presents the collective title to 103,024 hectares in Riosucio to a group representing twenty-three Afro-descendent communities made up of 3,840 individuals.³²

May 3, 2000: Members of the displaced population from the Cacarica River basin establish the Self-Determination, Life and Dignity Community (*Comunidad de Autodeterminación Vida y Dignidad*, “CAVIDA”).³³

January 31, 2001–March 2001: The displaced persons, with the assis-

26. *Id.*

27. *Id.* ¶ 155.

28. *Id.* ¶ 157.

29. *Id.* ¶ 159.

30. *Id.* ¶ 160.

31. *Id.* ¶ 161.

32. *Id.* ¶ 162.

33. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. C) No. 270, “Having Seen” ¶ 2(d) (May 30, 2013).

tance and protection of the State, begin to return to their lands in the Cacarica River basin and establish two new communities, Esperanza en Dios and Nueva Vida, with international assistance.³⁴

March 11, 2003: Several hundred armed men raid the humanitarian settlement of Nueva Vida.³⁵

June 2003: The Inter-American Commission on Human Rights conducts visits to the Cacarica River Basin communities.³⁶

2. Events Pertaining to Mr. Marino López

February 27, 1997: In Bijao, two paramilitaries, who are identified by the aliases “Manito” and “Diablito,” accuse one villager, Mr. Marino López, of being a member of the guerrilla forces.³⁷ As villagers watch,³⁸ they order him to bring them coconuts from a tree, kick him, and push him towards the bank of the Cacarica River.³⁹ One of the men swings his machete at Mr. López’s neck, missing, but striking his shoulder.⁴⁰ Mr. López attempts to escape by fleeing into the river, but the two men communicate to him that escaping will only imperil him further.⁴¹ Induced by their threats, Mr. López returns to the banks, but before he is ashore, the man called “Manito” decapitates Mr. López with a machete.⁴² Mr. López’s body is further dismembered and the paramilitaries kick his head as if it were a football.⁴³ Mr. López’s remains are later disposed of in the Cacarica River, where they are found days later.⁴⁴

January 19, 1999: The Prosecutor General’s Office opens an investigation into connections between paramilitaries and the commander of the

34. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Report on Merits, ¶ 164.

35. *Id.* ¶ 171.

36. *Id.* ¶ 174. Due to an error in the original report there are two paragraphs labeled 174. This pin cite refers to the paragraph 174 in section 8 entitled “Regarding to the Exploitation of Collective Lands.”

37. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 108 (Nov. 20, 2013).

38. *Id.* ¶ 110.

39. *Id.* ¶ 108.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* ¶ 109.

44. *Id.* ¶ 110.

17th Brigade of the Army, General Rito Alego del Río Rojas.⁴⁵

July 23, 2001: Authorities arrest Gen. del Río Rojas pursuant to a warrant of arrest and search his home.⁴⁶ The Prosecutor General charges Gen. del Río Rojas with conspiracy to commit a crime, the murder of a protected person, and forced displacement.⁴⁷

August 3, 2001: Gen. del Río Rojas files a habeas corpus petition with the Thirty-First Criminal Court (“Criminal Court”) of Bogotá Circuit challenging his arrest.⁴⁸

August 4, 2001: The Criminal Court grants Gen. del Río Rojas’s petition, orders his release, and orders an investigation into his arrest.⁴⁹

July 16, 2002: Father Javier Giraldo files a complaint in “representation of humanity” regarding the investigation of Gen. del Río Rojas.⁵⁰

August 13, 2002: The Prosecutor General rejects Father Giraldo’s complaint.⁵¹

September 25, 2002: Father Giraldo files an application for *amparo* before the Criminal Cassation Chamber of the Supreme Court of Justice (“Supreme Court of Justice”) against the Prosecutor General alleging that the denial of his July 16, 2002 complaint violated his fundamental right of access to justice.⁵²

October 8, 2002: The Supreme Court of Justice denies Father Giraldo’s *amparo*. The Constitutional Court opts to review the adverse judgment.⁵³

March 21, 2003: The Constitutional Court revokes the decision by the Supreme Court of Justice and orders the Prosecutor General to admit

45. *Id.* ¶ 145.

46. *Id.* ¶ 146.

47. *Id.* ¶ 144.

48. *Id.* ¶ 148.

49. *Id.*

50. *Id.* ¶ 150.

51. *Id.*

52. *Id.* ¶ 151.

53. *Id.*

Father Giraldo's request for legal standing as a civil party.⁵⁴

May 9, 2003: The Prosecutor General closes the investigation against Gen. del Río Rojas.⁵⁵

February 9, 2007: Judicial Police conduct a technical examination of the corpse of Mr. López.⁵⁶

February 12, 2007: Following DNA testing, the remains of Mr. López are returned to his family.⁵⁷

September 3, 2008: Prosecutors request a summons to hear testimony from Gen. del Río Rojas regarding Mr. López's death.⁵⁸

September 4, 2008: Gen. del Río Rojas is arrested.⁵⁹

December 26, 2008: Prosecutors issue an indictment against Gen. del Río Rojas alleging that he had command responsibility in an organized power structure and is criminally liable for the aggravated homicide of Mr. López.⁶⁰

February 24, 2009: The Superior Court of Bogotá confirms the indictment.⁶¹

March 11, 2009: The Supreme Court of Justice orders that a new investigation against General del Río Rojas can proceed because of the discovery of new evidence and facts that were not known when the case was closed.⁶²

April 15, 2011: The case against Gen. del Río Rojas regarding conspiracy to commit a crime is officially reopened.⁶³ Gen. del Río Rojas re-

54. *Id.*

55. *Id.* ¶152.

56. *Id.* ¶167.

57. *Id.*

58. *Id.* ¶169.

59. *Id.* ¶170.

60. *Id.* ¶172.

61. *Id.* ¶173.

62. *Id.* ¶153.

63. *Id.* ¶159.

fuses to testify.⁶⁴

August 23, 2012: The Eighth Criminal Court of Bogotá Special Circuit issues a judgment convicting Gen. del Río Rojas of the aggravated homicide of Mr. López because of his command responsibility.⁶⁵ The court sentences him to twenty-six years' imprisonment and the loss of civil rights for ten years.⁶⁶

B. Other Relevant Facts

Descendants of Africans brought to the Americas as slaves during the colonial period are the main inhabitants of the rural Cacarica River basin.⁶⁷ They first began to settle the region in the mid-nineteenth century following the abolition of slavery and the population was firmly established by the mid-twentieth century.⁶⁸ They formed communities along the banks of the Cacarica River and its tributaries.⁶⁹ The economy of the area is one of self-sufficiency, including subsistence farming, fishing, hunting, and logging.⁷⁰ The people of the Cacarica River basin are ignored and marginalized by the State, which fails to fight local government corruption and to provide adequate social assistance, education, and health care.⁷¹

This region, known as the Urabá region, consists of the extreme northwest of Columbia and is where Central and South America meet.⁷² Because of its location and heavy forestation, the Urabá region is advantageous for the trafficking of drugs, arms, and chemical products.⁷³ Throughout the period in which the events of the case take place, the State is engaged in an armed conflict with leftist guerrilla groups, such as the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, "FARC").⁷⁴ Additionally, numerous right-wing paramilitary groups also engage in fighting against leftist

64. *Id.* ¶ 155.

65. *Id.* ¶ 179.

66. *Id.* ¶ 379.

67. *Id.* ¶ 85.

68. *Id.*

69. *Id.*

70. *Id.* ¶ 87.

71. *Id.*

72. *Id.* ¶ 83.

73. *Id.* ¶ 88.

74. *Colombian Conflict Has Killed 220,000 in 55 Years, Commission Finds*, THE GUARDIAN (Jul. 25, 2013, 7:19 AM), <http://www.theguardian.com/world/2013/jul/25/colombia-conflict-death-toll-commission>.

guerrillas.⁷⁵ Concurrent with Operation Genesis, the paramilitary groups “Chocó Bloc” and “Pedro Ponte” conduct Operation Cacarica to threaten, terrorize, and expel the inhabitants of a region several kilometers north of Operation Genesis.⁷⁶

II. PROCEDURAL HISTORY

A. Before the Commission

June 1, 2004: The Inter-ecclesiastical Justice and Peace Commission (*Comisión Intereclesial de Justicia y Paz*) presents the petition to the Commission on behalf of Mr. Marino López and members of twenty-two Afro-descendant communities located in the Cacarica River basin.⁷⁷

October 21, 2006: The Commission issues Report on Admissibility No. 86/06, finding that the case is admissible.⁷⁸

March 31, 2011: The Commission issues Report on Merits No. 64/11.⁷⁹ The Commission concludes that the State violated several articles of American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture.⁸⁰ It finds that the State undertook Operation Genesis jointly with paramilitary groups and did not adopt “appropriate preventative and protective measures for the civilian population.”⁸¹ Furthermore, it finds that the State failed to investigate the human rights violations committed against Mr. López and the displaced members of the Afro-descendant communities that occurred during and after Operation Genesis.⁸² The Commission recommends that the State investigate and punish those responsible for the human rights abuses,⁸³ adopt measures to protect the Afro-descendent communities’ and their

75. *Id.*

76. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 198.

77. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Admissibility Report, Report No. 86/06, Inter-Am. Comm’n H.R., Case No. 12.573, ¶ 1 (Oct. 21, 2006).

78. *See generally id.*

79. *See generally* Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Report on Merits, Report No. 64/11, Inter-Am. Comm’n H.R., Case No. 12.573 (Mar. 31, 2011).

80. *Id.* ¶ 409(5).

81. *Id.* ¶ 409(1).

82. *Id.* ¶ 409(2).

83. *Id.* ¶¶ 410(1), 410(3).

members' rights,⁸⁴ acknowledge international responsibility,⁸⁵ compensate the communities,⁸⁶ and make reparations.⁸⁷

B. Before the Court

July 25, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁸

1. Violations Alleged by Commission⁸⁹

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention to the detriment of Mr. López.

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention,

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. López's immediate family.

Article 5 (Right to Humane Treatment)

in relation to:

84. *Id.* ¶¶ 410(2), 410(5), 410(7).

85. *Id.* ¶ 410(4).

86. *Id.* ¶ 410(6).

87. *Id.* ¶¶ 410(8)–410(12).

88. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 1 (Nov. 20, 2013).

89. *Id.* ¶ 3.

Article 1(1) (Obligation to Respect Rights)
Article 19 (Rights of the Child)

Article 22 (Freedom of Movement and Residence)
in relation to:

Article 1(1) (Obligation to Respect Rights)
Article 5 (Right to Humane Treatment)
Article 11 (Right to Privacy)
Article 17 (Rights of the Family)
Article 19 (Rights of the Child)
Article 21 (Right to Property)
Article 24 (Right to Equal Protection) of the American Convention to the detriment of the displaced community members of the Cacarica River basin.

2. Violations Alleged by Representatives of the Victims⁹⁰

Same Violations Alleged by Commission.

Between January 14, 2013–March 14, 2013: The Members of the Black Ethnic Group (an organization of victims of the forced displacement from Bajo Atrato), Thomas Mortensen of Christian Aid, the International Center for Transnational Justice, Jaime Arturo Fonseca Triviño of *Confesion Voluntariado Misionero Cristiano MANOS UNIDAS*, *Coordinación Colombia Europa Estados Unidos*, and Macarena Sáez of the American University Washington College of Law Impact Litigation Project each submit an *amicus curiae* brief to the Court.⁹¹

May 30, 2013: The Court issues an order denying a request for provisional measures filed by the representatives of the victims.⁹² The representatives requested provisional measures for the benefit of fourteen leaders from the displaced population associated with the group CAVIDA⁹³ and who armed groups had targeted in violent attacks.⁹⁴ The

90. Ms. Liliana Andrea Ávila, Mr. Iván Danilo Rueda, and Mr. Abilio Peña Buendía, all from the Interecclesiastical Justice and Peace Commission, serve as representatives of the victims. *Id.* ¶ 9 n.7. The Court's Judgment on Preliminary Objections, Merits, Reparations and Costs does not identify separate violations alleged by the representatives.

91. *Id.* ¶ 10.

92. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. C) No. 270, "Decides" ¶ 1 (May 30, 2013).

93. *Id.* "Having Seen" ¶ 1 n. 3.

Court, however, reminds the State that preventative measures ordered by the Commission are still in force and it is still obligated under Article 1(1) of the American Convention to respect individuals' rights.⁹⁵

November 20, 2013: The State makes several preliminary objections. It argues that the Report on Merits does not identify the individual victims,⁹⁶ that it has already complied with the recommendations in the Report on Merits,⁹⁷ that statements from several experts should not be admitted,⁹⁸ and that the representatives included facts and claims not related to the case.⁹⁹ The Court unanimously rejects all of the State's preliminary objections, finding that they do not affect the Court's competence to hear this case and therefore are not a matter for preliminary objections.¹⁰⁰

III. MERITS

*A. Composition of the Court*¹⁰¹

Diego García Sayán, President
 Manuel E. Ventura Robles, Vice-President
 Alberto Pérez Pérez, Judge
 Eduardo Vio Grossi, Judge
 Roberto de Figueiredo Caldas, Judge
 Eduardo Ferrer MacGregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 20, 2013: The Court issues its Judgment on Preliminary Ob-

94. *Id.* "Having Seen" ¶ 4.

95. *Id.* "Decides" ¶ 1.

96. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 23.

97. *Id.* ¶ 26.

98. *Id.* ¶ 28.

99. *Id.* ¶ 30.

100. *Id.* ¶ 34.

101. Because he is a Colombian national, Judge Humberto Antonio Sierra Porto did not take part in the deliberation or signing of the Judgment. *Id.* n.**.

jections, Merits, Reparations and Costs.¹⁰²

The Court found unanimously that Colombia had violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) of the Convention, to the detriment of Mr. López,¹⁰³ because:

The State did not contest that the paramilitaries tortured and killed Mr. López and dismembered his body.¹⁰⁴ Accordingly, the only determination left for the Court was whether the State bore responsibility for Mr. López's death. The Court noted that it is well known that the State Judiciary has found that the State Armed Forces have collaborated on numerous occasions with paramilitary groups.¹⁰⁵ The Court recalled that statements of former soldiers, paramilitaries, and experts support a finding that, in the context of Operation Genesis, senior commanders of the 17th Brigade of the Army had connections with paramilitary groups in the region.¹⁰⁶ The Court also noted that evidence suggests that paramilitary groups carried out joint operations with the Army during Operation Genesis.¹⁰⁷ The Court further noted that both the State Army and paramilitary groups carried out military operations "almost simultaneously" in the end of February 1997¹⁰⁸ and in close proximity to each other.¹⁰⁹ Based on this and other evidence, the Court concluded that the State Army and paramilitary groups acted in coordination.¹¹⁰ Therefore, the Court found that the acts perpetrated against Mr. López by paramilitaries are attributable to the State.¹¹¹

102. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs.

103. *Id.* ¶ 281.

104. *Id.* ¶¶ 108–109.

105. *Id.* ¶ 249.

106. *Id.* ¶ 253.

107. *Id.* ¶ 259.

108. *Id.* ¶ 271.

109. *Id.* ¶ 272.

110. *Id.* ¶ 280.

111. *Id.* ¶ 281.

Article 22(1) (Right to Move Freely Within a State) and Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the Convention, to the detriment of the displaced members of the Afro-descendant communities,¹¹² because:

The Court established violations of Articles 22(1) (Right to Move Freely Within a State) and 5(1) (Right to Physical, Mental, and Moral Integrity) in two ways. First, the Court found that the State was responsible for the paramilitary operation that resulted in the displacement of the Afro-descendent communities for the same reasoning that the Court found the State responsible for the killing of Mr. López.¹¹³ Second, the Court found that the State had obligations to ensure humanitarian assistance and a safe return to members of the Afro-descendent communities within the framework Article 22(1)'s right to freedom of movement and residence and Article 5(1)'s right to personal integrity.¹¹⁴ The State failed to meet these obligations in several ways. First, the State failed to provide adequate assistance to the displaced persons while they were displaced.¹¹⁵ The Court noted that there was a shortage of housing, food, clean water, and health care for the duration of their displacement, which was at least three years.¹¹⁶ Second, the State failed to adequately assist those displaced persons who decided to return to the Cacarica River basin.¹¹⁷ Although the State dispensed limited aid to those who returned,¹¹⁸ the security situation that caused the displacement in 1997 continued to persist at the time of the resettlement in the new communities of Esperanza en Dios and Nueva Vida.¹¹⁹ The communities, the Court noted, continued to be subjected to threats, harassment, and acts of violence by armed groups.¹²⁰

112. *Id.* ¶ 324.

113. *Id.* ¶¶ 280, “Declares” 2.

114. *Id.*

115. *Id.* ¶ 323.

116. *Id.* ¶ 321.

117. *Id.* ¶ 322.

118. *Id.*

119. *Id.* ¶ 320.

120. *Id.*

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Articles 1(1) and 19 of the Convention, to the detriment of the displaced children of the Afro-descendant communities,¹²¹ because:

The Court noted the State's obligation under Article 19 (Rights of the Child) was not limited to granting special protection to children under the American Convention, but also recognizing the rights of children in other applicable international instruments.¹²² In particular, the Court read Article 19's obligation in light of the object and purpose of the Convention on the Rights of the Child, which establishes that States Parties must afford special safeguards and care to children, particularly in times of internal armed conflict.¹²³ The Court therefore concluded that the State was obligated to afford special protection to children depending on their circumstances.¹²⁴

In this case, those circumstances were an internal armed conflict.¹²⁵ The Court commended the State's efforts to assist children who returned to the Cacarica River basin, but it nevertheless noted that during their three-year-long displacement, the State provided inadequate resources to assist the children,¹²⁶ especially in the form of education, health care, housing, and food.¹²⁷ The Court found that the State's failure was especially egregious because of the children's special vulnerability.¹²⁸

Article 21 (Right to Property), in relation to Article 1(1) of the Convention, to the detriment of the displaced members of the Afro-descendant communities,¹²⁹ because:

121. *Id.* ¶ 331.

122. *Id.* ¶ 327.

123. *Id.* ¶¶ 327–328.

124. *Id.* ¶ 327.

125. *Id.* ¶ 331.

126. *Id.* ¶ 329.

127. *Id.* ¶ 330.

128. *Id.* ¶ 329.

129. *Id.* ¶¶ 353, 358.

Article 21 (Right to Property) protects both the right to individual property and the right to collective property of indigenous peoples, such as the Afro-descendent inhabitants of the Cacarica River basin.¹³⁰ Moreover, the right of indigenous peoples to their ancestral territory and the resources within it is protected by the Convention because the use and enjoyment of that territory and resources is necessary to ensure the community's survival.¹³¹ The Court found that domestic law afforded the Afro-descendent inhabitants of the Cacarica River basin collective ownership to their ancestral territory and rights to manage its economic development (such as logging) in coordination with the State.¹³²

The Court found the State responsible for a violation of Article 21 (Right to Property) in two ways. First, the Court determined that paramilitary attacks in the Cacarica River basin caused the destruction of homes, which not only led to financial losses, but also losses of the inhabitants' basic means of subsistence.¹³³ Given the State did not contest the legal considerations of this property violation, the Court considered the State responsible for the acts of paramilitary groups.¹³⁴ Second, the Court also found that illegal logging activity in the Cacarica River basin violated the State's laws that afforded rights to the Afro-descendent inhabitants of the region and that the State did not take actions to end the exploitation.¹³⁵ The Court determined that this failure demonstrated that the State did not have effective administrative or judicial remedies to protect the Afro-descendent inhabitants' right to collective property.¹³⁶

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of the displaced members of the Afro-descendant communities,¹³⁷ because:

Although the Court found that the State met its obligation to investigate with regard to the prosecution of Gen. del Río Rojas,¹³⁸ it noted that in-

130. *Id.* ¶ 346.

131. *Id.*

132. *Id.* ¶¶ 347, 355.

133. *Id.* ¶ 352.

134. *Id.* ¶ 353.

135. *Id.* ¶ 355.

136. *Id.* ¶ 356.

137. *Id.* ¶¶ 397, 410.

138. *Id.* ¶ 385.

vestigations of other members of the Armed Forces¹³⁹ and paramilitaries who may be responsible have not proceeded with due diligence.¹⁴⁰ However, the Court declined to make a finding that the State did not conduct investigations within a reasonable time, because although much time had elapsed, the nature of the case was extremely complex.¹⁴¹ With regard to the illegal logging operations, the Court noted that writs of amparo had been granted by several domestic courts compelling the State “to take the necessary measures to ensure compliance with the administrative decision ordering the suspension of logging.”¹⁴² However, the Court found that there was no evidence that the State complied with these domestic orders.¹⁴³ Accordingly, the Court found that the State had not provided an effective remedy to stop the expropriation of the collective property of the members of the Afro-descendant communities.¹⁴⁴

The Court declined to rule on whether or not Colombia had violated:

Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture,¹⁴⁵ because:

*The Court found that the facts pertaining to these allegations had been sufficiently analyzed within the framework of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment) of the American Convention.*¹⁴⁶

Article 24 (Right to Equal Protection) of the American Convention,¹⁴⁷ because:

In the course of the proceedings, the Court found that the Commission

139. *Id.* ¶ 387.

140. *Id.* ¶¶ 388–393.

141. *Id.* ¶ 399.

142. *Id.* ¶ 407.

143. *Id.* ¶ 408.

144. *Id.* ¶ 410.

145. *Id.* ¶¶ 281–282.

146. *Id.* ¶ 282.

147. *Id.* ¶ 334.

*failed to present any evidence illustrating which laws of the State, or their implementation, were contrary to Article 24 (Right to Equal Protection) of the American Convention.*¹⁴⁸

Articles 11(1) (Right to Honor and Dignity) of the American Convention,¹⁴⁹ because:

*The Court found that facts related to these allegations had been sufficiently analyzed and conceptualized with regard to Articles 5 (Right to Humane Treatment), 17 (Rights of the Family), and 19 (Rights of the Child) of the American Convention.*¹⁵⁰

Article 17 (Rights of the Family) of the American Convention, to the detriment of the displaced children of the Afro-descendant communities,¹⁵¹ because:

*The Court noted that the conditions in the Turbo sports arena harmed family structures and that the State made no efforts to protect these families.*¹⁵² *However, the Court found that there was insufficient evidence regarding how these communities exercised their rights to family and how exactly the conditions effected those rights.*¹⁵³

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition)

148. *Id.*

149. *Id.* ¶ 388.

150. *Id.* ¶¶ 338, “Declares” 10.

151. *Id.* ¶ 336.

152. *Id.* ¶¶ 325, 118.

153. *Id.* ¶ 336.

Guarantee)

1. Judgment as a Form of Reparation

The Court noted that the Judgment in this case is itself a form of reparation.¹⁵⁴

2. Investigate, Identify, and Punish Those Responsible

The Court ordered the State to use all necessary means to continue investigations in order to identify, prosecute, and punish all those responsible for the facts of the case and to remove any obstacles that could maintain impunity.¹⁵⁵

3. Publish the Judgment

The Court ruled that the official summary of the judgment shall be published once in both the *Official Gazette* and a newspaper of national circulation.¹⁵⁶ Also, the State must upload the judgment in its entirety on the official website of an institution or organ of the State and make it available to the public for one year.¹⁵⁷

4. Publicly Acknowledge Responsibility

The Court ordered the State to publically acknowledge responsibility for the facts of the case in a public ceremony, with senior State officials and members of the Afro-descendent communities in attendance.¹⁵⁸ The ceremony must be publicized by the media and only take place in accordance with the agreement of members of the Afro-descendent communities with regard to its place and characteristics.¹⁵⁹

5. Provide Medical Treatment

As a measure of rehabilitation, although the Court commended the State's current efforts to provide medical treatment, the Court ordered

154. *Id.* "And Establishes" ¶ 11.

155. *Id.* ¶ 440.

156. *Id.* ¶ 445.

157. *Id.*

158. *Id.* ¶ 447.

159. *Id.*

the State to furnish treatment, namely psychological care, to the victims, if they consent to such treatment.¹⁶⁰ The care shall be given for as long as necessary and will include the provision of medication, if necessary.¹⁶¹ The care must be individualized as to take into account the circumstances and needs of each person.¹⁶² The care shall be provided through the national health services and the victims will be given priority access to services, regardless of timeframes proscribed by domestic law.¹⁶³

6. Restoration of Land

As a measure of restitution, the Court mandated that the State restore the ancestral lands that the Afro-descendent population of the Cacarica River basin collectively owns.¹⁶⁴ The lands must be restored so that population can effectively use, enjoy, and possess the land and its resources.¹⁶⁵

7. Guarantee Security

The Court ordered the State to ensure that the members of the Afro-descendent communities of the Cacarica River basin have safe conditions such that they can go about their daily lives.¹⁶⁶ Specifically, the State must send official representatives to the region, specifically to the communities of Esperanza en Dios and Nueva Vida, at least once a month for a period of five years.¹⁶⁷ The officials must meet with members of the communities to verify public order.¹⁶⁸ If members of the communities express concern regarding their safety, the State must take measures in collaboration with the communities to address the concerns.¹⁶⁹

160. *Id.* ¶¶ 452–453.

161. *Id.* ¶ 453.

162. *Id.*

163. *Id.*

164. *Id.* ¶ 459.

165. *Id.*

166. *Id.* ¶ 460.

167. *Id.*

168. *Id.*

169. *Id.*

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages¹⁷⁰

The Court ordered that the State shall guarantee that the 372 individuals identified as victims in this case and listed in Annex I of the Judgment¹⁷¹ have access to funds previously authorized by the State for the purposes of compensating victims and administered by the Integral Collective Reparation Plan.¹⁷² Such funds shall be distributed according to domestic law, but without delay and irrespective of any administrative timeframes.¹⁷³

The Court awarded \$70,000 in equity for pecuniary and non-pecuniary harm caused to Mr. López to Ms. Emedelia Palacios Palacios, his companion and only next of kin identified by the Court.¹⁷⁴ The Court noted, however, that there was information suggesting that Mr. López had other next of kin.¹⁷⁵ The Court therefore awarded \$35,000 to each of Mr. López's children and \$10,000 to each of his siblings, if any exist.¹⁷⁶ The State must pay the prescribed damages to any children or siblings of Mr. López who appear before competent authorities of the State.¹⁷⁷ The State shall notify any such potential next of kin by making announcements at peak listening times on local and national radio stations at least once a month for a period of six months.¹⁷⁸ Such announcements must detail the procedure by which next of kin may claim their

170. The Court did not differentiate between pecuniary and non-pecuniary damages in the Judgment.

171. *Id.* ¶ 431.

172. *Id.* ¶¶ 473, 475.

173. *Id.*

174. *Id.* ¶ 476.

175. *Id.* ¶ 435.

176. *Id.* ¶ 476.

177. *Id.* ¶ 435.

178. *Id.*

awards.¹⁷⁹

2. Costs and Expenses

The Court awarded \$80,000, in equity, to the Inter-ecclesiastical Justice and Peace Commission for costs and expenses associated with the proceedings.¹⁸⁰

3. Total Compensation (including Costs and Expenses ordered):

\$ 150,000¹⁸¹

*C. Deadlines*¹⁸²

The Court required that the official summary of the judgment be published within six months of notification of the Judgment.¹⁸³

The State must hold the ceremony in which it publically acknowledges responsibility within one year of notification of the Judgment.¹⁸⁴

The Court ordered the State to begin providing medical care within six months of the notification of the Judgment.¹⁸⁵

The Court ordered that State officials must visit the Cacarica River basin communities to ensure public order until at least five years after notification of the Judgment.¹⁸⁶

The State must compensate the 372 individuals identified as victims in this case and listed in Annex I of the Judgment within one year of the notification of the judgment.¹⁸⁷

The State must compensate Ms. Palacios and the Inter-ecclesiastical Justice and Peace Commission within one year after notification of the Judgment.¹⁸⁸

179. *Id.*

180. *Id.* ¶ 481.

181. This amount does not include any awards to Mr. López's potential children or siblings. It also does not include compensation to be paid in accordance with the State's domestic compensation program to the 372 individuals identified as victims in this case and listed in Annex I of the judgment.

182. The Court does not provide specific deadlines for the State to investigate, prosecute, and punish those responsible, restore the territorial land, or guarantee security to the communities.

183. *Id.* ¶ 445.

184. *Id.* ¶ 447.

185. *Id.* ¶ 453.

186. *Id.* ¶ 460.

187. *Id.* ¶¶ 473, 475.

188. *Id.* ¶ 482.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 270 \(Nov. 20, 2013\).](#)

2. Decisions on Merits, Reparations and Costs

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 270 \(Nov. 20, 2013\).](#)

3. Provisional Measures

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. C\) No. 270 \(May 30, 2013\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Petition No. 499-04, Inter-Am. Comm'n H.R. (June 1, 2004).

2. Report on Admissibility

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Admissibility Report, Report No. 86/06, Inter-Am. Comm'n H.R., Case No. 12.573 \(Oct. 21, 2006\).](#)

3. Provisional Measures

[Not Available]

4. Report on Merits

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Report on Merits, Report No. 64/11, Inter-Am. Comm'n H.R., Case No. 12.573 \(Mar. 31, 2011\).](#)

5. Application to the Court

[Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.573 \(July 25, 2011\).](#)

VIII. BIBLIOGRAPHY

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Thirteen Years Since Operation Genesis, COLOMBIA SUPPORT NETWORK

(Apr. 7, 2010), <http://colombiasupport.net/2010/04/thirteen-years-since-operation-genesis/>.