

Office of the General Rapporteur

Macro-case 03

Analytic resume about the findings on
the Sub-Case Caribbean Coast



CONTEXT



PRECAUTIONARY MEASURES



TOAR PROPOSALS

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SPECIAL EDITION

MACRO-CASE 03: SUB-CASE CARIBBEAN COAST



/ JEP

1. Introduction

This document is a summary of the Concluding Resolution of Macro-Case 03 within the Sub-Case Caribbean Coast, adopted by the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts (hereafter Judicial Panel for Acknowledgement of Truth) of the Special Jurisdiction for Peace (JEP for its acronym in Spanish) regarding the facts and conducts established about the killings and forced disappearances of members of the indigenous Kankuamo and Wiwa communities presented as "falsos positivos". The decision covers the period between 9 January 2002 and 9 July 2005, attributable to some members of La Popa Battalion.

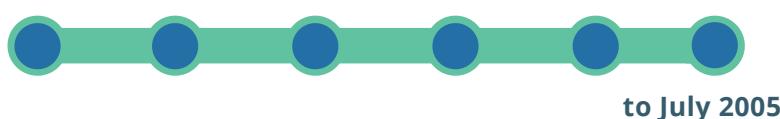


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FACT SHEET

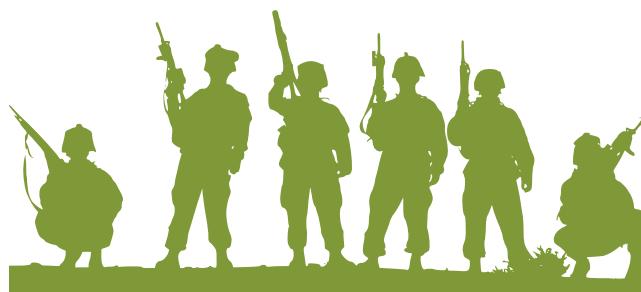
WHEN?

War crimes and crimes against humanity perpetrated
from January 2022



WHO?

Committed by



**members of La Popa Artillery
Battalion No. 2 (BABOP)**

(in some cases, with assistance of paramilitary groups)

HOW?

Macro-criminal patterns identified:

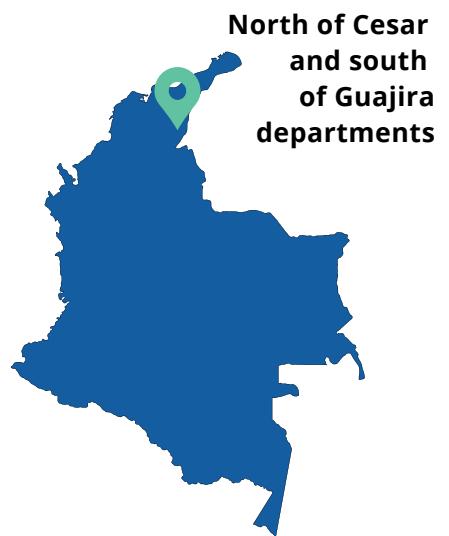
1

Members of the military forces, with the support of paramilitary groups in the area, murdered innocent people accused of belonging to illegal armed groups or common crime.

2

The victims who were in a vulnerable state and without support networks or family members, were taken to the places for their execution through false job offers.

WHERE?



VICTIMS



Peasants



Informal workers



Vulnerable people



**Wiwa and Kankuamo
communities**



**Non-combatant
civilians**

2. Background

The Judicial Panel for Acknowledgement of Truth took on Macro-Case 03 based on Report 5, entitled “Deaths illegitimately presented as combat casualties by agents of the State”, submitted by the Attorney General’s Office (*Fiscalía General de la Nación*) to the JEP on 17 July 2018. Subsequently, through Order 033 of 12 February 2021, the internal prioritization of Macro-Case 03 was made public and, in said ruling, it was established that during the period between 2002 and 2008, 6,402 people were illegally killed to be presented as combat casualties throughout the national territory. The Judicial Panel for Acknowledgement of Truth, in order to identify the factors and clarify the truth about the homicides reported as combat casualties by State agents, defined six sub-cases:

- ◆ Sub-Case Antioquia
- ◆ Sub-Case Caribbean Coast
- ◆ Sub-Case Norte de Santander
- ◆ Sub-Case Huila
- ◆ Sub-Case Casanare
- ◆ Sub-Case Meta



Currently, the sub-cases of Antioquia, Casanare and Meta are in the first phase of investigation and analysis. The Caribbean Coast, Norte de Santander and Huila sub-cases have already received concluding resolutions and some of those most responsible for these events have acknowledged the truth.

Regarding the Sub-Case Caribbean Coast, in particular, the Judicial Panel for Acknowledgement of Truth determined in Order 033 that the investigation would first prioritize “the events that occurred between January 2002 and July 2005 in the north of Cesar and the south of La Guajira, which corresponded to deaths illegitimately presented as combat casualties by members of the Bapop [La Popa Battalion]”. Subsequently, the period between July 2005 and 2008 would be analyzed.

Within the same Sub-Case of the Caribbean Coast, the Judicial Panel for Acknowledgement of Truth issued Order 128 of 7 July 2021, in which it determined the occurrence of 127 homicides and forced disappearances in the period between January 2002 and July 2005, known as extrajudicial executions. In this regard, the Judicial Panel identified 15 perpetrators, 12 of whom are charged in the Concluding Resolution; the remaining three were sent to the Investigation and Prosecution Unit (Unidad de Investigación y Acusación) of the JEP for not contributing to the truth.

2.1. Path to Acknowledgement and Special Sanction

2.1.1. Opening

By means of Order 005 of 17 July 2018, the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts of the JEP took cognizance of Macro-Case 03, based on Report 5 presented by the Attorney General's Office, entitled "Deaths illegitimately presented as combat casualties by agents of the State".



/JEP

2.1.2. Accreditation of individual and collective victims

The accreditation of victims is a way for those who have been affected by the Colombian Armed Conflict to participate in the JEP. Such individuals or groups may be part of the proceedings as special participants. This refers to the possibility for those who are accredited to: attend the voluntary testimonies, submit observations and even request evidence within the JEP procedural framework.

Regarding Macro-Case 03, on 6 December 2018 the Judicial Panel for Determination of Legal Situations (hereafter Judicial Panel for Determination) informed the Judicial Panel for Acknowledgement of Truth about the list of accredited victims for events related to Macro-Case 03. Likewise, the Judicial Panel for Acknowledgement of Truth, after having carried out, between 22 August 2018 and 6 December 2018, 41 voluntary testimonies by alleged perpetrators of the facts related to Macro-Case 03, made these voluntary testimonies available to the accredited victims to guarantee their participation in the process. From these voluntary testimonies, 20 deponents turned out to be allegedly responsible for acts committed by the Artillery Battalion No.2 La Popa.

Using Order SRVR-CDG-014, the Judicial Panel studied the legitimacy of the accreditation of victim status to 49 more persons within the Macro-Case and provided them with access to the 537 voluntary testimonies that had been given by the deponents to date. In the voluntary testimonies, 119 alleged perpetrators of the acts committed by the La Popa Battalion were also identified.

The Judicial Panel for Acknowledgement of Truth, after having carried out 41 voluntary testimonies, made these available to the accredited victims to guarantee their participation in the process.

On 17 October 2019, the Judicial Panel for Acknowledgement of Truth received in a public hearing the oral presentation of observations to the voluntary testimonies by the victims belonging to the Indigenous Wiwa Community.¹ Subsequently, through the order of 20 December 2019, the Judicial panel convened a second hearing for the presentation of observations by victims belonging to the Indigenous Kankuamo People, a hearing that was held on 21 January 2020.²

Finally, on 8 March 2022, 49 persons requested accreditation as victims; of these, the Judicial Panel only recognized 48.

¹ It was carried out with two family groups, with interventions by victims, their representatives and the Human Rights Coordinator of the Wiwa community. Convened by Order of 19 September 2019. Case File 03, Notebook of Observations of Indigenous Communities of the Tenth Armored Brigade.

² Case File 03, Notebook of Observations of Indigenous Communities of the Tenth Armored Brigade.



/ JEP

2.1.3. An order setting the date of the hearing or proceeding

During 18 and 19 July 2022, 12 participants were bound to Macro-Case 03 of “extrajudicial executions”. In turn, the members of the military forces and the La Popa Battalion expressed their acceptance of responsibility in writing, ratified in the acknowledgment hearing held in the city of Valledupar.

2.1.4. Determination of facts and conducts

The Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts received:

- ◆ Eight reports from public entities, human rights organizations and victims.
- ◆ Sixty-one testimonies of the deponents.
- ◆ Thirteen written observations submitted by the representatives of the accredited victims within Macro-Case 03, the indigenous authorities of the Kankuamo and Wiwa communities and the Public Prosecutor's Office.
- ◆ Twenty judicial inspections of more than 50 files from the Ordinary Criminal Justice, the Military Criminal Justice and interns, as well as the operational archives of the First Division, the Tenth Armored Brigade and the La Popa Battalion.

Therefore, by means of Order 024 of 18 February 2022, the Judicial Panel for Acknowledgement of Truth confirmed the nature and development of the circumstances in which the deponents carried out the 127 homicides and forced disappearances described in **Order 128 of 2021**, as well as the identification of those most responsible.

After analyzing the information provided by the victims, State agencies and the deponents, the Judicial Panel concluded that the events that occurred in the territorial jurisdiction of the La Popa Battalion were systematic, known as **macro-criminal patterns**:

1. The first indicated that members of the military forces, with the support of paramilitary groups in the area, murdered innocent people accused of belonging to illegal armed groups or common crime.
2. The second is related to the social characteristics of the victims, since many of them were in a vulnerable state and without support networks or family members. As a result, they were taken to the places of their execution through false job offers made by the deponents.

It is important to highlight that during the determination of the facts and conducts in this case, the harm caused to individuals, families and communities was examined; the war crimes and crimes against humanity were classified as such, and those most responsible were identified so that they could acknowledge their responsibility.

Using this methodology, the Judicial Panel concluded that between 9 January 2002 and 9 July 2005, members of the La Popa Battalion, during the command of Colonels (r) Publio Hernán Mejía Gutiérrez and Juan Carlos Figueroa Suárez, illegitimately killed 127 people. Thus, the Judicial Panel identified 71 events that occurred in the municipalities of Valledupar, San Diego, Pueblo Bello, El Copey, Codazzi, Manaure, La Paz and Bosconia, in the north of Cesar department, and San Juan del Cesar and Urumita, in the south of La Guajira department.

2.1.5. Precautionary measures

On 10 May 2022, the Judicial Panel for Acknowledgement of Truth decreed precautionary measures regarding the bodies resting in the alternate cemetery of the municipality of El Copey, due to the risk that these remains may not be recovered and identified at a later date.



3. Special Cases

The JEP documented serious, differentiated and disproportionate harm to the Wiwa and Kankuamo communities. For both peoples, this led to the decomposition of their belief system, the breakdown of collective trust, the impossibility of mourning, chronic fear that affected community relations, social polarization and the discrediting of institutions.

The evidence documented by the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts indicates that, among the 127 cases, 12 correspond to members of the two indigenous peoples. Of these, three were Wiwa youths, including a 13-year-old Wiwa girl who was pregnant, and nine men belonging to the Kankuamo people.

Regarding the cases related to the Kankuamo people, Mr. Guillermo Gutiérrez Riveros recognized the homicide of Uriel Evangelista Arias Martínez, Carlos Arturo Cáceres, Uriel Evangelista Arias and Mr. Evelio Vaca Pérez in August 2003 within the context of "Operation Judas"³, which sought to establish military control of the populations surrounding the city of Valledupar.



/JEP

³ Judas Fragmentary Operations Order 079 of 15 July 2003, operational folder, Case File 03, Notebook of observations of Indigenous Communities of the Tenth Armored Brigade.

4. Deponents

The Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts recognized that – about the events that occurred between 2002 and 2008 related to combat casualties in the form of extrajudicial executions – the deponents who have acknowledged complete, detailed and exhaustive truth and their responsibility under the terms of Order 128 of 2021, **are eligible for the imposition of a special sanction (*sanción propia*)**. These are:

1. Guillermo Gutiérrez Riveros
2. Heber Hernán Gómez Naranjo
3. Efraín Andrade Perea
4. Manuel Valentín Padilla Espitia
5. Carlos Andrés Lora Cabrales
6. Eduart Gustavo Álvarez Mejía
7. José de Jesús Rueda Quintero
8. Elkin Leonardo Burgos Suárez
9. Yeris Andrés Gómez Coronel
10. Alex José Mercado Sierra
11. Juan Carlos Soto Sepúlveda
12. Elkin Rojas



On the other hand, the deponents **Publio Hernán Mejía Gutiérrez, Juan Carlos Figueroa Suárez** and **José Pastor Ruiz Mahecha** did not contribute to the truth at the request of the Judicial Panel for Acknowledgement of Truth. For this reason, their cases were referred to the Investigation and Prosecution Unit of the JEP to clarify the events that occurred during the 2002-2008 period as members of the La Popa Battalion.



4.1. Works, Occupations, and Activities with Reparative and Restorative Content (TOAR, for its acronym in Spanish⁴) proposals

As a reparation measure for the victims, the deponents proposed to the Trial Chamber in Cases of Acknowledgement of the Tribunal for Peace⁵ four proposals for Works or Activities with Reparative or Restorative Content (TOAR) to be considered in the imposition of the special sanction (applicable in this system of transitional and restorative justice, in which the deponents provide full truth and accept responsibility). Special sanctions result in the implementation of TOAR and imply a component of effective restriction of freedoms and rights, such as freedom of residence and movement.

4.1.1. Dignification of the good name – victims of Wiwa and Kankuamo indigenous communities

This project suggests the implementation and management of four different activities aimed at “re-establishing the good name of the Victims in the Region” and is articulated along two lines of work: the first is called “Project Radio” and contemplates the production of advertising spots of approximately 30 seconds and a radio report in which “a tribute is made in memory of the good name of those affected”. The second line is entitled “Written Project” and foresees the realization of a written report to be published in regional newspapers and the construction of a "Monument-Plaque" containing the names of all the victims of assassinations and forced disappearances determined in Order 128 of 2021. **The reparation project contemplates three components for its development:**

- ◆ **Component 1:** contracting an advertising space on public and private radio stations during prime time to produce an advertisement with an approximate duration of 30 seconds.

⁴ Trabajos, Obras y Actividades con Contenido Reparador-Restaurador.

⁵ The deponents presented to the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts proposals for Works or Activities with Reparative or Restorative Content (TOAR), which were admitted in the Concluding Resolution. These TOARs will then be evaluated by the Trial Chamber in Cases of Acknowledgement of the Tribunal for Peace to reach a decision regarding the 12 deponents.

- ◆ **Component 2:** "Project Radio" corresponds to the creation of a radio report that would be broadcasted on public or private radio stations in the region, in which the twelve deponents would make "a tribute in memory of the good name of those affected", clarifying that the victims did not belong to illegal groups.
- ◆ **Component 3:** the "Written Project" contemplates the production of a written report in regional newspapers and foresees the construction of a "Monument-Plaque" containing the names of the victims. For the written report, a narration of the "life and work of the victims as members of the Wiwa and Kankuamo indigenous communities" in the main written media of the region is considered.

4.1.2. Historic Memory Reserve of the Indigenous Communities, victims of the Colombian armed conflict in Cesar and the Caribbean

The main objective of this project is to "redress the damage caused to the good name of each of the 127 victims murdered by members of the La Popa battalion between 2003 and June 2005, and those that may be included", and, as an additional objective, "to present the lived experience of the indigenous peoples amid the armed conflict". **The reparation project contemplates four components for its development:**

- ◆ **Component 1:** construction of a room with audiovisual media, including elements to make victims visible and podcasts recorded with their families.
- ◆ **Component 2:** presentation of photographs and documents on the stigmatization of indigenous peoples.
- ◆ **Component 3:** creation of murals made by victims.
- ◆ **Component 4:** establishment of a painted or metallic plaque with inscriptions of the apologies of the deponents.



4.1.3. "In the Footsteps of Memory" and "From Man to Earth"

The deponent Yaris Andrés Gómez Coronel individually presented two projects, the objective of which is, for the first one, to carry out reconciliation actions with the Wiwa and Kankuamo communities, as well as reforestation actions and recovery of water basins within the second project. **The reparation project "In the Footsteps of Memory" contemplates two components for its development, and the project "From Man to Earth" contemplates other two components.**

4.1.3.1. "In the Footsteps of Memory"

- ◆ **Component 1:** the deponent Gómez Coronel proposes, as part of his special sanction, “to participate in the ancient rituals that the [Wiwa and Kankuama] communities request for the exaltation of the memory of the victims, responding to the demands of the families of Luis Eduardo Oñate, Carlos Mario Navarro and Deimer Mendoza Montero (and all those who wish to do so, informing the relatives of the place where the victims were killed, so that with this information, the peoples may carry out the actions and rituals according to their customs).
- ◆ **Component 2:** “construction of sculptures, symbols, mausoleums or any type of tribute for the exaltation of the memory of the victims, which, through a dialogic exercise of ideation, construction and preservation, allows the deponent's participation during the time the sanction is set to last”.

4.1.3.2. "From Man to Earth"

- ◆ **Component 1:** to lead a group of military personnel linked to these events to carry out territorial management tasks by “exploring with state institutions (sic) and non-governmental entities the existence of programs, plans and activities of this type and the funds for them”.
- ◆ **Component 2:** to put the victims in charge of managing, disposing of and coordinating the budgetary and resource management. The physical tasks would be carried out by the deponents.



4.1.4. Handicrafts for Peace, Forgiveness and Reconciliation with the Victims of the Armed Conflict

This project, presented independently by the deponent Juan Carlos Soto Sepúlveda, seeks to teach how to make “paper and yarn handicrafts, which can be the basis for starting a small microenterprise”. In his view, with this handicrafts project, he seeks to “create a dignified source of employment and a way of life” that puts into practice the knowledge he acquired during the time he was detained in the Military Confinement Center.



4.2. Considerations of the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts regarding TOAR propositions

- ◆ 4.2.1. The Judicial Panel for Acknowledgement of Truth, in reference to the museological project presented collectively by the deponents **Heber Hernán Gómez Naranjo, Eduart Gustavo Álvarez Mejía, Elkin Burgos, Efraín Andrade Perea, Manuel Valentín Padilla Espitia, José de Jesús Rueda Quintero and Elkin Rojas**, indicated the importance of creating interinstitutional coordination with the National Center of Historical Memory and the need to maintain the channels for victims' participation, when there will be a further determination on this project, and to guarantee the consultation mechanism established in paragraph 6 of Article 141 of Law 1957 of 2019.

- ◆ 4.2.2. The reforestation and water basin recovery actions and measures proposed here are fully in line with the works and activities listed in Article 141 of the Statutory Law of the JEP as possible lines of special sanction to be developed by the State's public policies on peace. They have the potential to be articulated within the environmental protection programs in rural areas and infrastructure construction and repair programs in urban areas.

Nevertheless, as will be presented below, from the information obtained by this Judicial Panel within the line of consultation carried out with national and territorial entities concerned with the implementation of the Final Peace Agreement, it was only possible to identify a window of opportunity to articulate a possible TOAR project with environmental and reforestation content in the collective reparation plan currently being carried out by the Unit for the Victims for the benefit of the Kankuamo community.

- ◆ 4.2.3. By means of the official letter of 12 September 2022, the commander of the Joint Strategic Transition Command (CCOET) of the Military Forces informed the Judicial Panel that the Military Units with facilities in the municipalities of northern Cesar and southern Guajira "do not have physical facilities that can be used as a place of residence, in addition to the current public order situation, which does not offer optimal security conditions".

Therefore, the conditions of habitability and security for the deponents will depend, among other factors, on the restorative component that the First Instance Chamber of the Tribunal for Peace decides to adopt for the present Sub-Case and on the steps that may be taken in the inter-institutional articulation currently being conducted by the JEP's Committee for the Articulation of Special Sanctions.



5. Nature of the decision

The concluding resolution is the last stage of the process within a judicial panel. It has a similar legitimacy and origin to the Resolution of Accusation within the ordinary criminal justice system in Colombia. Specifically, it is the last step that activates the competence of the Tribunal for Peace for the corresponding decision and adoption of a sentence.

It is the ruling that defines the conceptual, factual and legal framework on which the dialogic trial⁶ will be based on the imposition or not of a sanction on one or more deponents. It also represents a guarantee for the accused, since he/she cannot be surprised in the tribunal stage with accusations or facts different from those established in the concluding resolution.



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Auto 128, of 7 July 2021

⁶ Dialogic justice departs from the traditional dichotomy of justice, which assumes that the only form of justice is prison or impunity. On the contrary, dialogic justice proposes a solution based on the dialogue of all parties involved in a judicial process to find a solution that offers alternatives to prison or any punitive means.

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