Colombia, Special Jurisdiction for Peace, Extrajudicial Executions in Casanare

Ruling of the Chamber of the Special Jurisdiction for Peace in Colombia on members of Colombia´s National Army, state agents and civilians accused of the wilful killing of 296 persons and presenting them as fighters killed in combat in Casanare during the years 2005 and 2008. The Judicial Panel analysed IHL, IHRL, and ICL when interpreting conduct of the National Army in the context of the NIAC and identifying the war crimes and crimes against humanity committed.

Acknowledgements

Case prepared by Sara María Astrálaga Cediel, LLM student at Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli (University of Geneva) and Professor Julia Grignon (Laval University).

[Explanation of the Special Jurisdiction for Peace: Foreseen by the Colombia peace agreement of 2016, the Judicial Panel for the Acknowledgment of Truth, Responsibility and Determination of Facts and Conduct investigates serious human rights violations and grave breaches of international humanitarian law committed during the armed conflict. The procedure before this Judicial Panel has a dialogic and acknowledgment connotation, which means that there is no prosecutor's office to accuse the perpetrator; instead, he (she) appears voluntarily before the Chamber to give his (her) version of the facts and accept his (her) responsibility, if he (she) has any, or to point out who are the alleged perpetrators.
The Judicial Panel contrasts the perpetrator's statement with other sources of information such as the investigations carried out by the ordinary justice system, the observations of the victims, the statements of other persons who appear before the Judicial Panel, and contextual analysis reports.
After comparing the different sources of information, the Judicial Panel issues, such as in this case, a decision known as the "Decision on Determination of Facts and Conduct". It presents the results of its cross-

checking, pointing out the facts and conducts determined, making a legal qualification of these as international crimes (mostly crimes against humanity and war crimes), and formulating an attribution of individual criminal responsibility to those who would be the most responsible. Following this decision, the Judicial Panel convenes an Acknowledgment of Responsibility Hearing. In this hearing, the perpetrators identified as the most responsible state whether or not they recognize their responsibility in the determined facts and conducts.

If the perpetrator recognizes his (her) responsibility, he (she) is included in a subsequent decision called as "Resolution of Conclusions" in which it is stated what his (her) contributions to the truth were, what his (her) recognition of responsibility consisted of and what activities he (she) presented as a sanction project to repair the harm caused to the victims. This Resolution of Conclusions is sent to the Section of the Tribunal for Peace for cases with acknowledgement of truth and responsibility, which, after a process of verification of the procedure before the Chamber, decides and imposes the sanction that the perpetrator will serve.

If the perpetrator has not made significant contributions to the truth or acknowledged responsibility, then he (she) is referred to the prosecutor's office (in the JEP this is called the Investigation or Indictment Unit (UIA)). If it finds merit, the prosecutor's office will initiate adversarial proceedings before the Peace Tribunal Section for cases without acknowledgement.]

RULING SUB D - SUBCASE CASANARE – 055 OF 14 JULY 2022

[Source: Special Jurisdiction for Peace, Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts, Casanare Subcase, Ruling SRVR-Sub-D-055 of the 14th of July 2022 (most footnotes omitted, our translation); available at https://jurinfo.jep.gov.co/normograma/compilacion/docs/auto_srvr-sub-d-055_14-julio-2022.htm]

[…]

I. BACKGROUND

[…]

II. CONSIDERATIONS

9. In the previous section, a brief account was given of the background and procedural actions carried out in the Casanare subcase of Case 03. In this section, the Chamber for Recognition of Truth, Responsibility and Determination of Facts and Conduct (Chamber for Recognition) will determine the facts and conduct attributable to certain members of the XVI Brigade. The most responsible parties identified in this writ are called to come before the Chamber for Recognition to acknowledge or deny their responsibility for said facts

and conduct, in the terms set forth herein and in accordance with the parameters of the Appeals Chamber, adopted by the Chamber for Recognition in previous rulings.

[…]

A. Jurisdiction of the Chamber of Recognition to determine facts and conduct based on the comparison of sources and the standard of appreciation of sufficient basis

15. The Political Constitution enshrines the preferential jurisdiction of the Special Jurisdiction for Peace (SJP) over acts committed during the armed conflict, as well as the specific jurisdiction of the Chamber for Recognition over those most responsible for the most serious infractions and representative acts […]. The constitutional regulation provides that the SJP "will hear cases concerning acts that were caused[1] or occasioned by,[2] or directly[3] or indirectly[4] related to, the armed conflict and must not have been motivated by a desire for illicit personal enrichment; or if such a motivation exists, it must not have been the determining motivation for the criminal conduct"; for acts that took place before 1 December 2016. This is especially the case if they are considered "gross violations of IHL or serious violations of human rights".

[…]
B. The XVI Brigade, illegal armed actors and conflict factors in the territory of Casanare and the province of La Libertad in Boyacá
[…]

C. Facts determined by the Chamber for Recognition
[…]

131. The Chamber has sufficient basis to understand that during this period, the criminal organization (C.ii.) established by some members of the XVI Brigade, state agents who are not members of the armed forces and civilian third parties in 17 municipalities in Casanare, three in Boyacá, two in Meta and one in Arauca, killed 296 people, including eight women and one victim with a diverse sexual orientation or gender identity. These murders were presented as 212 combat casualties. In addition, 201 of the 296 people killed disappeared. After comparing the reports, the accounts and other aspects of the evidence, the Chamber for Recognition has determined that the repetition of these conducts, carried out in a systematic and generalized manner, exhibited a pattern of macro-criminality consisting of murdering people and subsequently claiming that their deaths occurred in combat.

132. The justification provided for the execution of the criminal plan, which, in 72.6 per cent of cases coincided with the person's disappearance, was based on two policies. The first involved the physical elimination of people identified, on the basis of supposed intelligence information, as targets because they

had family members who were guerrillas or because of their places of residence, among other reasons. Targets were also selected based on the particular interests of those providing the information, or because the killers considered them “different”, “unproductive”, or “undesirable”(section C.iii.1.). Under this policy, the members of the organization justified their actions by pointing out that they sought to restore the order that the community was demanding, to put an end to “the bandits” and to provide the justice that the authorities were failing to impart. The second policy consists of a complex system of pressure and incentive, with rewards offered for combat kills (section C.iii.2.). The Chamber found that these policies were used at different levels of the organization and took different forms at the various levels of the hierarchy.

[…]

198. Elimination of people stigmatized or identified by the intelligence units as belonging to or being affiliated with illegal armed groups. As part of the policy of eliminating people belonging to communities stigmatized as “guerrilla nests”, the XVI Brigade’s intelligence services and its tactical units singled out their victims prior to taking action against them. The victims, who were farmers and other inhabitants of these areas, were accused of being militia members and identified as such in “censuses”. The brigade commander was aware of these lists, which were continuously updated and were shared with the oil company BP. This initial identification was also carried out through mass or individual arrests by the army; in several instances, it took place months before the victims were murdered and presented as combat casualties. In several of the cases where the XVI Brigade carried out this initial identification, the Chamber has evidence that the victims reported that they were arbitrarily detained by members of the brigade, accused of being guerrilla collaborators, taken to XVI Brigade facilities, photographed and, in some cases, mistreated. Since the brigade had no incriminating information, these people were eventually released, but their photographs, data and location had been recorded by the brigade’s intelligence units, which would go on to organize the tactical missions to kill these people and present them as combat casualties.

[…]

205. The illustrative case of the murder of José Albeiro Joya Rodríguez. The events of 25 May 2006 followed the pattern described above. José Albeiro Joya Rodríguez had been previously identified as a guerrilla collaborator by the B2 office of the XVI Brigade. Prior to his murder, members of the Escorpión taskforce, from Counter-Guerrilla Battalion number 29 (also known as BCG 29, commanded by Jairo Gabriel Paguay), had set up a checkpoint in Labranzagrande, Cerro de la Virgen, El Tablón area. This taskforce, led by Manuel Guillermo Torres, began to carry out checks on people entering and leaving the town, using “lists of people with arrest warrants issued against them that the brigade had sent to the battalion”. As part of these activities, the commander of BCG 29, Jairo Gabriel Paguay, received “some information from the B2 office of the XVI Brigade in Yopal about the movements of the José David Suárez front in the Chaguaza district; moreover, some arrest warrants issued by the DAS [the Administrative Department of Security, Colombia’s security intelligence agency] had arrived, including for Mr Albeiro Joya and Mr Nelson Joya Rodríguez”.

Paguay relayed this information to the taskforce commander, Manuel Guillermo Torres, who reports: “Commander Paguay was there waiting for me, […] he had an operations order; he told me that two people had been captured entering the town, one was Nelson Joya Rodríguez and the other I don’t remember, [and] that there was an arrest warrant for Nelson Joya Rodríguez. He said that I should enlist in the taskforce to get a day’s rations and go to the house of the Joya Rodríguez family and kill José Albeiro Joya Rodríguez, for whom there was an arrest warrant”. Before starting the operation, Commander Paguay gave him a “Smith & Wesson 9 mm pistol”, telling him that “if Albeiro Joya Rodríguez does not have a weapon, this is the weapon that must be planted on him to ensure that he can legally be declared a combat casualty”. From this interaction, it was clear to the taskforce commander that he would be carrying out the operation on the orders of his superior: “to go to the place where the Joya Rodríguez family lives, and if José Albeiro Joya Rodríguez is there, kill him”. Commander Paguay gave orders for the tactical mission Rayo No. 39 to begin and the taskforce members set off to the Chaguaza district at midnight, arriving at the El Espejo farm at approximately 5am. Once there, they knocked on the Joya Rodríguez family’s door and asked for Albeiro. His mother told them that he was not there. The soldiers positioned themselves around the house, and “at around 7:20am, two people approached; the one with the horse came closer and, as he identified himself as Albeiro Joya, they let him through”. At that moment, Manuel Guillermo Torres ordered Private Jholman Farley Cuevas Arenas to kill the victim: “He is José Albeiro Joya, you have to shoot him”. Then “Private Cuevas advanced towards José Albeiro and shot him; then he went into a kind of shock. I told him to put the gun somewhere on his person, […] I took the gun out of my bag, Private Pineda approached him, put the gun in his hand and fired a shot into the ground”. Finally, “several soldiers fired in order to simulate combat”. Subsequently, the taskforce soldiers reported the result of the operation to commander Paguay, who in turn informed the XVI Brigade to arrange the recovery of the body: “At approximately 2pm, a helicopter team recovered the body and took it to brigade facilities, where they did the autopsy. I then gave the order to register the death and exfiltrate the body overnight to Labranzagrande”.

206. Policy for eliminating diverse or excluded social groups in urban areas. In order to chasten and warn the inhabitants of Casanare that they might belong to or be part of social groups or be engaging in activities that the army troops considered – according to their parameters – “deviant”, and in order for the tactical units to maintain micro-territorial control in certain municipalities, neighbourhoods and zones, the troops of the XVI Brigade labelled the Casanarean people as “good people […] [or] bandits”. Taking advantage of the competent authorities’ negligence in identifying the bodies of people supposedly killed in combat (C.iv.5), they included among their victims two female sex workers, two young people involved in punk culture, a person with a diverse sexual orientation or gender identity and a person with a cognitive disability. In addition to the lack of oversight in identifying the bodies, the fact that the deaths of the victims were hidden behind an operational results statistic that prioritized casualties made it easy to present people who did not match the typical profile of a combatant. This was especially true when they were victims who, because of their conditions, the troops considered would not be missed or sought by their families.

[…]

210. Illustrative case of the murder of an unidentified woman, who worked as a sex worker. In this case, Lance Corporal Luis Eduardo Pereira Avilés of the GAULA [Unified Action Groups for the Liberation of Persons – a special unit of Colombia's armed forces] in Casanare took advantage of the victim's line of work to trick her. He told her that he was a client who wanted to spend the night with her in exchange for 50,000 pesos. The victim agreed to go with him to a hotel on the outskirts of Yopal. Deceived and intoxicated, she was taken in the GAULA taxi (driven by professional soldier Wbelmar Cardona) along the road from Yopal to Aguazul. On the way, the taxi was stopped by the GAULA patrol. The victim was forced into the GAULA truck by Lieutenant Jhon Alexander Suancha Florián, who then took her to Tablón de Támara, the predetermined place for her execution. The GAULA patrol arrived at Tablón de Támara around midnight. Once there, the six members of the GAULA patrol forced the woman to change her clothes, giving her a dark blue sweatshirt and a pair of wellington boots, which she had to put on before she was killed. The victim, fearful and knowing that they were going to kill her, insulted the patrol members. Suancha Florián then took her to the Pauto River, where he ordered Private Víctor Hurtado Marín and Private Wbelmar Cardona to shoot her. The GAULA members turned on the truck's headlights and shot her head-on. Finally, they placed a revolver in her hand and fired it. The patrol members disposed of her clothes and other belongings.

[…]

220. […] The pressure to present results – particularly combat kills – came from the highest tiers of the organization's hierarchy and permeated the actions of the XVI Brigade at all levels. The demands of superiors, as set out in goals and expected results, translated into combat casualties; the mechanisms for monitoring results, including radio programmes or comparisons with other units, are examples of how these pressures to achieve results became part of unit dynamics. Although the Chamber found that the phenomenon in Casanare was affected by a complex range of factors and motivations, as described in this section, such pressures reinforced the idea of body count as the main indicator of military success. This idea was promoted by some military personnel and reflected in the institutional evaluation systems. It also resulted in various types of threats, directed at those who refused to present combat casualties at any cost or to participate in the killings and disappearances.

221. On the other hand, […] there were different rewards and incentives that, according to the accounts of the participants, influenced their decisions to become involved in the execution of these acts. The Chamber found that military career-related recognition, as well as economic and work-based incentives such as the commission to Batallion No. 3, deployed in the Sinai Peninsula in Egypt, and benefits such as vacation time, leave and special meals, had a significant impact on the phenomenon.

[…]

v. The direct and indirect victims of these events suffered bodily harm, and harm to their families and community systems

[…]

5. Harm differentiated by gender

[…]

528. Gender-based violence in the context of the armed conflict has not been perpetrated only against women and girls. The continuum of violence has also operated as “a means that seeks to eliminate from the territory everything that is perceived as different […] that deviates from the heteronormative codes imposed by a society”. Thus, people with diverse sexual orientations and gender identities have suffered gender-based violence, with some people being killed because of their differences. Moreover, the violence against these people has worked “to send a message to the community that anyone who thought and acted in a similar way would suffer the same fate”.

[…]

533. Under the same policy of eliminating members of the civilian community of Casanare considered “different”, José Rubiel Llanos, a young person with a diverse sexual orientation or gender identity, was murdered and presented as a combat casualty. This event […] is an example of a victim’s gender expression leading to their torture and subsequent murder at the hands of Birno troops. […]

[…]

536. All these circumstances lead this Chamber to believe that, although young men in the territory were particularly affected by these events, women and people with a diverse sexual orientation or gender identity experienced specific forms of violence and cruelty. This is because particular situations of vulnerability and social prejudices made them targets to be used in executing the events or selected to be presented as combat casualties.

6. Five adolescents were illegitimately presented as combat casualties

537. In Writ 128 of 2021 [a previous ruling of the SJP, referenced by the Chamber of Recognition], the Chamber explained how children and adolescents have suffered the impacts of violence in the context of armed conflicts in unique ways, experiencing orphanhood, sexual violence, forced displacement, forced recruitment and use in the conflict, in addition to other impacts on their development and peaceful existence. Children and adolescents are subject to special constitutional protections, and the guarantee of their rights is a priority for the state, society and the family, by virtue of their best interests, a constitutional principle also enshrined in the Convention on the Rights of the Child. […]

538. The deaths of these adolescents, illegally caused by members of the XVI Brigade during the period

under analysis, are a clear example of the impact that the armed conflict has had on children's rights. In a scenario of systematic execution of people who are then presented as combat casualties, the deaths […] show how the members of the brigade openly shirked their responsibility to guarantee the full protection of the rights of these adolescents. They also disregarded the special protection established for children and adolescents by international humanitarian law (IHL).

[…]

7. One person with a disability was selected as a victim because their disability made them vulnerable.

540. Previously, the Chamber established how some members of the criminal organization belonging to units of the XVI Brigade implemented measures to eliminate stigmatized and vulnerable people (C.iii.1). The Chamber pointed out that the victims' gender, occupation, culture, cognitive conditions and economic status led to stigmatization and singling out. This resulted in army personnel identifying them as appropriate targets for elimination since they "did not contribute to the development of a community". In this regard, the Chamber for Recognition established that José Lorenzo Taborda Taborda, who had a cognitive disability, was executed (paragraph 212).

541. In accordance with Writ 128 of 2021, the Committee on the Rights of People with Disabilities expressed at the time its particular concern about the execution and presentation as combat casualties of people with disabilities in Colombia. In this context, the Chamber for Recognition considers that one of the worst forms taken by the killings and disappearances, presented as combat casualties, was the deliberate manipulation or instrumentalization of people with cognitive disabilities. This form of instrumentalization of people who are extremely vulnerable shows the harm associated with the idea that people with disabilities are dispensable in society. The persistence of this idea has perpetuated marginalizing behaviours, resulting in practices that harm society by preventing it from recognizing itself as diverse.

D. Proper legal evaluation of the facts and conducts determined in the Casanare subcase of Case 03
[…]

i. Applicable legal framework for the proper legal evaluation of the facts and conducts
545. […] [T]he SJP will carry out its own legal evaluation based on the Colombian Criminal Code, international human rights law (IHRL), IHL and international criminal law (ICL). Although Transitory Article 22 of Legislative Act 01 of 2017 does not cite ICL as a source, this Chamber has already determined on previous occasions that ICL is also applicable in determining the existence of international crimes committed by members of the armed forces.

[…]

548. The Chamber for Recognition has found that in the period between 2005 and 2008, some members of the XVI Brigade, its tactical units and the Delta taskforces committed war crimes – the murder of protected people – and crimes against humanity – the murder of 296 people, including eight women and one person with a diverse sexual orientation or gender identity –, as determined through the cross-checking exercise carried out by the Chamber and that correspond to the macro-criminal pattern identified in this decision. For this purpose, the events for which more information is available and that are therefore more illustrative were taken as a basis. They also committed the war crime of using three children or adolescents in hostilities and the crime against humanity of persecuting a person with a diverse sexual orientation or gender identity, who was killed. Finally, of these 296 people killed, 201 are also victims of the crime against humanity of forced disappearance of persons, based on the particular findings obtained by the Chamber. These facts correspond to conduct for which it is not possible to allege the statute of limitations for criminal action.

ii. Those most responsible, identified by this Chamber, committed war crimes and crimes against humanity.

1. Murders of protected persons as war crimes
552. The 296 deaths illegitimately presented as combat casualties that have been identified in the Casanare subcase correspond to the war crime of murder of a protected person, in accordance with Article 135 of the Colombian Criminal Code, which is, in turn, in accordance with Article 8(2)(c)(i) of the Rome Statute of the International Criminal Court.

553. Article 35 of the Colombian Criminal Code establishes the criminal offence of murder of a protected person. Its structural elements are aligned with the war crime of violence to life and person in Article 8(2)(c)(i) of the Rome Statute. The crime of murder of a protected person is committed when “occasioned by and in the development of an armed conflict”, a person “protected by the international conventions of humanitarian law ratified by Colombia” is killed. The paragraph of this provision sets forth the subjects who, for the purposes of this criminal offence and the others contemplated in Title II, are understood to be persons protected by IHL, among them, for example, civilians and combatants who have laid down their arms “by detention, surrender or any similar cause”. On the other hand, murder as a war crime in non-international armed conflicts is provided for in Article 8(2)(c)(i) of the Rome Statute, which lists violations of Article 3 common to the Geneva Conventions. This provision refers to “violence to life and person […] especially murder of all kinds”. The components of this crime include the killing of one or more persons, “who were hors de combat or were civilians […]”, and, as a contextual element, that “the acts took place in the case of and were related to an armed conflict not of an international character”.

554. Article 135 of the Criminal Code and Article 8(2)(c)(i) of the Rome Statute are based on both the principle of distinction and the principle of humanity. According to the principle of distinction, parties to an armed conflict, under IHL, may only legitimately attack those who have identified themselves as combatants, never civilians. On the other hand, in accordance with the principle of humanity, all persons not participating in hostilities, including, for example, those who have laid down their arms or are hors de combat, must be

treated humanely.

[…]

556. The following will explain why these facts described above contain the objective structural elements of the war crime of murder of a protected person. Specifically, the “protected person” identity of the victims and the relationship of the murders to the armed conflict will be analysed. The analysis of the subjective dimension will be carried out in the presentation of the individual accounts of those most responsible when these are developed.

[…]

557. Under the terms of Article 135 of the Criminal Code, in order for the war crime of murder of a person protected by IHL to be committed, the victims must be “protected persons” as defined in the IHL treaties that Colombia has ratified. Thus, according to Article 135 of the Criminal Code, civilians, understood as “all persons who are not members of the state armed forces or organized armed groups that are party to the conflict”, are protected persons. But so are, among others, “individuals not participating in the hostilities and civilians in the hands of the opposing party”, “the wounded, sick or shipwrecked placed hors de combat”, and “combatants who have laid down their arms owing to capture, surrender or another similar reason”.

558. This is largely consistent with Article 8(2)(c) of the Rome Statute, which refers to acts committed against "persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause”.

[…]

560. As described above, the victims identified, who were illegitimately presented as combat casualties, can be classified into five groups: (i) demobilized people with a history of involvement with or link to criminal groups; (ii) victims without any connection to illegal groups, such as the sex workers who were tricked into spending the night with members of the army and were subsequently executed and presented as combat casualties;(iii) people who were the subject of intelligence information (on several occasions provided by the Administrative Department of Security) which led them to be labelled militia members and collaborators; (iv) victims killed during operations, after being wounded in combat, in the context of controlled deliveries, or in any other type of procedure; and (v) victims in vulnerable situations, such as people under the influence of alcohol or psychoactive substances. On several occasions, people in these states and as a result unable to defend themselves were tricked by troops acting as recruiters.

561. In these cases, the victims were civilians. Although some had been accused of belonging to or collaborating with an organized armed group, there was no hard evidence for these accusations, and they were therefore still under the protections that IHL provides for civilians in contexts of non-international armed

conflicts. Moreover, the people wounded and killed hors de combat were also protected by IHL, since they were not directly participating in the hostilities and should be protected by the army.

[…]

2. The use of children and adolescents as a war crime

563. The three instances identified in the subcase of using children and adolescents to lure victims who would later be killed, which occurred after 2005, correspond to the war crime of using children and adolescents as active participants in hostilities.
[…]

564. In addition, the Chamber will take into account the criteria established both in the Tadić case and in the 2020 Appeals Chamber Judgment 168 to determine whether, before these acts were commissioned, the use of people aged under 18 years to participate actively in hostilities already constituted a war crime under international law. As has been pointed out on other occasions, not all violations of IHL constitute war crimes. As established in the Tadić case, the criteria that an act must meet to qualify as a war crime are: (i) the violation constitutes a breach of a rule of IHL; (ii) the breached rule is found in customary or conventional law and is applicable to the particular circumstances of the case; (iii) the violation is serious; and (iv) the violation of the rule entails individual criminal responsibility. The Appeals Chamber has established the following requirements to qualify an act as a war crime: (i) the act was committed in the context of an international or internal armed conflict; (ii) the act constitutes a violation of a rule of IHL applicable to the respective conflict; and (iii) it is a violation that exceeds the necessary threshold of seriousness or gravity.

[…]

568. With respect to the existence of an international prohibition, the international legislative landscape shows that there are different standards regarding the protection of children and adolescents with respect to their recruitment and use in hostilities. For this reason, in order to identify international prohibitions and fulfil the duty to criminally prosecute those who commit these acts, it is necessary to analyse the relevant sources of law: IHL, IHRL, international criminal law (ICL) and the legal frameworks applicable to and manifested in the various armed conflicts around the world.

569. First, given that the factual context in which these prohibitions apply is armed conflicts, whether international or non-international, it is imperative to begin with lex specialis analysis, such as IHL. Therefore, using this applicable framework, and taking into account the Colombian context, which in this case is a non-international armed conflict (NIAC), the laws applicable to NIACs must be taken as a starting point.

[…]

571. That said, in concrete terms, recruitment of children was already prohibited in Article 4(3)(c) of Protocol II additional to the Geneva Conventions in the following terms: “Children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”. Thus, the wording of the article gives equal weight to both conducts, unlike Article 77(2) of Additional Protocol I, on the protection of children in international armed conflict, which focuses on the prohibition of direct participation in hostilities. The prohibition expressed in Article 4(3) includes both direct and indirect participation as well as forced and voluntary recruitment. This prohibition also includes using children to participate actively in hostilities. Therefore, in 1977, this Chamber already had conventional prohibitions in place (Article 4(3)(c) of Protocol II and Article 77(2) of Protocol I), as well as the prohibition of the recruitment and direct and indirect participation of children under 15 years of age in armed conflicts (Article 4(3)(c) of Protocol II).

572. However, between 1995 and 2005, the International Committee of the Red Cross (ICRC) conducted a study to identify customary humanitarian law, among which they identified rules 135, 136 and 137. In these rules, as early as 2005, were customary peremptory norms emanating from state practice and state acceptance (opinio iuris) that state that children affected by armed conflict are entitled to special respect and protection, that armed forces or armed groups must not recruit children, and that children must not be allowed to participate in hostilities. These provisions are essential to the Chamber’s ascertainment of the international crime, which will be discussed below.

573. At the ICL level, the Rome Statute was the first international treaty to criminalize the act of recruiting children under 15 years of age, taking up the pre-existing normative assumptions of ICL. […] Therefore, in Article 8(2)(e)(vii), this international instrument enshrined “conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities” in NIAC as a war crime in the section regarding “other serious violations of the laws and customs applicable in war”.

574. The International Criminal Court has understood that the crime of Article 8(2)(e)(vii) of the Rome Statute is committed when any of the three actions mentioned in the provision (conscripting, enlisting or using) are carried out. […] The same is true of the use of a minor to participate actively in hostilities, so it is not necessary that the minor be compelled to participate. Moreover, even if the minor participates actively in hostilities of their own free will, using the minor for that purpose and taking advantage of them would still be prohibited. On the other hand, according to the courts’ jurisprudence, the terms “use” and “participate” must be interpreted to include both direct participation in combat and active participation in related military activities, such as espionage or sabotage, and the use of children as messengers or decoys or at military checkpoints.

575. Finally, from the perspective of IHRL, recruitment, as a serious violation of children’s rights, is first of all included in the 1989 Convention on the Rights of the Child. [...] The 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict did, however, raise the minimum age of recruitment to 18 years. This protocol, which has been ratified by 172 states, provided in Article 1 that

“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”, and in Article 2, that “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces”. Likewise, Article 4(1) of the Optional Protocol prohibits recruitment by irregular armed groups or insurgents by providing that “armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”; and Articles 6(3) and 7(1) of the same protocol require governments to take measures to demobilize and rehabilitate child soldiers and ensure their social reintegration.

576. In this regard, there is a clear international prohibition on the recruitment, use and participation of children and adolescents in armed conflicts, either by participating actively in hostilities or by indirectly participating in other war-related tasks. Therefore, from the standpoint of conventional international law, at the time of the events, there was a clear prohibition against recruiting and using children under 18 years of age to participate in hostilities in the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

[…]

2.3 Trend towards criminalization of prohibited acts based on an analysis of international customary law

583. At this point, this Chamber finds it pertinent to review the practices of certain states and the opinio iuris with respect to the prohibition of recruiting and using persons above 15 years of age and under 18 years of age in armed conflict in 2005 to show the state of international customary law at that time and the tendency of states to criminalize this prohibited act.

584. Firstly, according to data compiled by the Coalition to Stop the Use of Child Soldiers and presented in its first global report in 2001, of the 100 states known to have mandatory military service, 79 set the recruitment age at 18 years or older; and of the 126 countries known to recruit voluntarily (some countries have no army) and for which there is reliable information, 74 set the recruitment age at 18 years or older.

585. Secondly, this Chamber has identified domestic law that shows that the prohibition of the use of minors under the age of 18 in hostilities was in force as early as 2005. At that time, this ban was in place in states such as Belarus, Canada, Colombia, Ethiopia, Guatemala, Indonesia, Iraq, Kenya, Malaysia, Nigeria and the Philippines. Moreover, prior to 2005, many states had already referred to the need to raise the minimum age for participating in hostilities to 18 years in their declarations, including Argentina, Austria, Bangladesh, Belgium, Chile, Colombia, Germany, Jordan, Pakistan and Uruguay. For example, many committed themselves at the 27th International Conference of the Red Cross and Red Crescent in 1999 to promoting the adoption of national and international laws prohibiting the military involvement in armed conflict of persons under the age of 18, including Canada, Denmark, Finland, Guinea, Iceland, Mexico, Mozambique, Norway, Sweden and Switzerland. This shows that before 2005 there were already states that prohibited

minors under 18 years of age from participating in hostilities, or at least had proposed the adoption of laws prohibiting this.

586. Furthermore, as at 2005, a total of 107 states had ratified [...] – and another six had already signed – the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

587. Per the information provided above, the Chamber understands that in 2005 there was already a trend towards criminalizing the use of children over 15 and under 18 years of age in armed conflict, which, in Colombia, is reflected in Article 162 of the Criminal Code.

2.4. Ascertainment of a war crime of recruitment, use and participation in armed conflict of persons aged over 15 and under 18 years of age

588. Generally speaking, the ascertainment of an international crime is based on three elements: (i) the actus reus; (ii) the mens rea; and (iii) the context. In the case of the customary war crime of recruitment and use of minors under 18 years of age in NIAC, this legal configuration is the result of the provisions previously mentioned in IHL, ICL and human rights law. Therefore, the Chamber finds that, based on the nullum crimen sine iure principle, for the year 2005, it is clear that: (i) whoever recruited or used children and adolescents; (ii) with the intention that they participate directly or indirectly in hostilities; and (iii) in the context of an NIAC, committed an international crime.

[…]

597. Members of the XVI Brigade recruited people under the age of 18 to expand their network of external recruiters between 2006 and 2007. Coerced by or in the custody of the troops, these children and adolescents were used to trick victims into handing themselves in to the troops to be killed and presented as combat casualties. Therefore, they were used to carry out acts that were essential to enable the most responsible individuals to commit the acts attributed to them during the determination of facts and conducts.

598. As established in paragraph 444, in relation to the events in which the victims Sérvulo Velandia and José Arquímedes Rincón were executed on 11 January 2007, FDJB, who was 17 years old at the time of the events, was used by the GAULA agents to deceive the victims and take them to the place of their execution.
[...]
[…]

600. Another one of the adolescents who participated in these events, XYZ, 14 years old at the time of the events, stated that she was pregnant and afflicted by problem drug use when Ramón Nonato Pérez, an intelligence officer of the Infantry Battalion No. 44, forced her to convince two victims, one of them a person

with a diverse sexual orientation or gender identity, to go to the places where they would be executed by members of the tactical unit in July and August 2006. According to statements made by military officers Wilfrido Domínguez Márquez and Cesar Augusto Combita Eslava, as well as the civilian recruiter José Ovidio Díaz, the adolescent was subject to possible coercion by military officers attached to the Birno Battalion, who took advantage of her vulnerability.

601. The army members thus forced these adolescents to lure the people who were going to be killed. The adolescent informants were told they would be supporting military operations and they would receive compensation for the information they provided. However, the goal of this collaboration was to carry out murders in order to artificially inflate operational results. Therefore, luring people to obtain both legal and illegal operational results constitutes participation in hostilities in the terms expressed in the previous section.

[…]

3. Contextual element of war crimes: relationship to the armed conflict

603. This Chamber has already indicated that, as regards the nexus of the conduct with the armed conflict, it should be noted that the conduct must not only have been committed during an armed conflict, but must also have had an additional connection with the conflict, whether geographical, personal or otherwise. Since a war crime is a violation of IHL that is criminalized and applicable only to conduct associated with the armed conflict, the nexus between the conduct and the conflict is an essential element for a war crime to exist. This is precisely what distinguishes it from an “ordinary” or “common” crime under domestic law. In the Kunarac case, the Appeals Chamber established a series of criteria that have been reproduced in point b) of Transitory Article 23 of Legislative Act 1 of 2017 and in Article 62 of Law 1957 of 2019, and that have been previously applied in decisions concerning this macro-case. According to the International Criminal Tribunal for the former Yugoslavia (ICTY)’s decision, although the armed conflict “need not have been causal to the commission of a crime,[...] the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, their decision to commit it, the manner in which it was committed or the purpose for which it was committed”.

604. The particular motivation of the perpetrators, such as financial gain or recognition in their careers, the elimination of certain stigmatized groups, or the elimination of people based on information in intelligence reports, does not prevent the Chamber from considering that this criterion is met.

4. Relationship between the crimes of murder and using children and adolescents in the armed conflict

605. Based on the elements described above and according to the findings of this Chamber, the armed conflict played a substantial role in the decision, in the manner, in the capacity and in the purposes of those most responsible for committing the acts of murder and using children and adolescents in hostilities. As

indicated in Writs 125 and 128 of 2021 [Writs 125 and 128 of 2021 are previous decisions of the Chamber], although the motivations of the army personnel were responding to pressure from their superiors and receiving incentives, suppressing some stigmatized groups, and eliminating civilians who were singled out, it should be emphasized that, in any case, through the commission of the killings, the objective of meeting the official targets that the military had set was achieved. As the Appeals Chamber pointed out, this type of crime cannot be explained without the context: that “only if there is an armed conflict does it make sense to stage a scene that simulates combat”. The Chamber emphasizes that those responsible for these murders were able to plan and execute them in the way they did because there was an armed conflict.

606. The internal armed conflict in Colombia created the conditions that led to or facilitated the commission of the murders, which, in the terms explained here, is sufficient to accept that they were “occasioned by and in the development of the armed conflict”, in the sense required by Article 135 of the Colombian Criminal Code. In this regard, the Constitutional Court has suggested that it is sufficient to establish that the perpetrator acted under the guise of armed conflict, and the conflict must not necessarily have been the cause of the commission of the crime. Thus, a “close and sufficient relationship with the development of the armed conflict” would suffice. In the present case, those responsible for the conducts assessed by the Chamber were mostly part of the National Army and, although they carried out these acts by deviating from the roles assigned to them as members of the armed forces, they used the resources, weapons, authority and, in general, the conditions of their military status to commit these acts, proving the link with the armed conflict.

607. Finally, with regard to the war crime of using children and adolescents, it should be noted that they were used as decoys to bring in victims who would be illegitimately presented as combat casualties. Therefore, the conducts, as well as the war crime of murder, for which those most responsible are charged, were clearly related to the internal armed conflict.

[…]

6. Gender-based persecution

623. Of the 296 murders illegitimately presented as combat casualties, there was at least one that was gender-based. As will be explained below, this conduct can also comprise a crime against humanity: persecution under Article 7(1)(h) of the Rome Statute.[...]

624. The crime of persecution against persons with a diverse sexual orientation or gender identity is rooted in numerous human rights instruments and documents that show that discrimination based on sexual orientation and gender identity is prohibited under IHRL. The International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination on various grounds, and the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council, in its General Comment No. 20 to the International Covenant on Economic, Social and Cultural Rights, expressly indicated that “other status” includes “sexual orientation”. This comment also recognized that gender identity and sexual orientation

cannot be grounds for discrimination. This was also affirmed by the United Nations Human Rights Committee in the cases of Nicholas Toonen vs Australia in 1994 and Edward Young vs Australia in 2003, among others.

625. There are also pronouncements in this regard in regional human rights systems. For example, in the case of Salgueiro da Silva Mouta vs Portugal, the European Court of Human Rights affirmed that “sexual orientation” is a prohibited category of discrimination, and reversed the decision of a Portuguese court that stripped a father of his custody rights because he was gay. In the Inter-American human rights system, the Inter-American Commission on Human Rights has also addressed the issue. In the case of Atala Riffo and daughters vs Chile, the Inter-American Court of Human Rights established that sexual orientation and gender identity are protected categories under the American Convention on Human Rights, and that it is therefore prohibited for a decision to diminish or restrict a person’s rights on the basis of their sexual orientation. Likewise, it was reiterated in Advisory Opinion 24/17 of the Inter-American Court of Human Rights that the Convention prohibits “any discriminatory rule, act or practice based on a person’s sexual orientation, gender identity or gender expression”.

626. Discrimination against people with a diverse sexual orientation or gender identity also constitutes a serious violation of their human rights. People in this community have the right to be free from acts of violence, particularly on discriminatory grounds such as sexual orientation or gender identity. Thus, in its 2011 report, Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, the United Nations General Assembly determined that there are a series of acts of violence committed against these persons that may imply a serious violation of their human rights, such as murder, rape or torture. Likewise, the Inter-American Commission on Human Rights’ report, Violence Against LGBTI Persons, indicates that violence against members of this community is a serious violation of their human rights. More specifically, it establishes that violence against people who identify as LGBTQIA+ has been characterized as a form of “social cleansing” in the context of the armed conflict in Colombia, which has occurred in several regions.

[…]

632. [...] Therefore, the perpetrators can also be charged with the crime against humanity of persecution as well as the crime against humanity of murder, taking into account that the latter constitutes a clear deprivation of fundamental rights and, therefore, the underlying act required to meet the criteria for the crime of persecution in the Rome Statute.

[…]

634. José Rubiel Llanos Arias, known as Chivas, was a person with a diverse sexual orientation or gender identity who was killed and presented as a combat casualty and, as will be outlined below, whose gender identity served as the motivation for their murder on 10 July 2006. This event is illustrative because of how the Birno Battalion troops made the victim’s gender identity the motivation for their murder.

[…]

638. The recruited young person who lured José Rubiel Llanos Arias, stated that Ramón Nonato Pérez – an intelligence officer of the Infantry Battalion No. 44 – forced her to bring Llanos Arias to the place where they would be executed by members of the tactical unit. The young person affirmed that the intention of the Birno 44 troops was to “rid Tauramena of undesirable people”, and that they targeted people with a diverse sexual orientation or gender identity, who they referred to as “detestable faggots”.

639. As explained elsewhere, there was a policy of suppression of diverse or excluded social groups in urban areas (C.iii.1). Although this policy was not directed only at people with a diverse sexual orientation or gender identity, but also at social groups or people who carried out activities that the army personnel considered “deviant”, there is evidence that shows that specifically in the case of the murder of the person with a diverse sexual orientation or gender identity, insults were uttered in relation to the victim’s gender identity. This shows a clear discriminatory motivation based on gender in that specific case, while in the broader scenario of the subcase, the motivations were more general, such as the Birno 44 troops’ intention to eliminate “undesirable persons”.

640. Specifically, one motivation of the XVI Brigade was for the Birno troops to seek out people of diverse sexual orientations in Tauramena who “had it coming to them”. They were persecuted and sentenced to death by the Birno troops for having a different sexual orientation. In the murder of Llanos Arias, while the troops were torturing them by beating them, they told them “that they were a detestable faggot; how disgusting they were, what a pansy [...] what will we do with the faggot? Keep crying, faggot; and they hit them, and obviously they started to cry and [the troops] would not stop the beating, landing blows all over their body, and obviously they hurled insults at them, so many: ‘you evil miscreant’”.

[…]

E. Individualization and attribution of individual responsibility to the most responsible of the XVI Brigade between January 2005 and November 2008
[…]

III. CONCLUSION

[…]

IV. ANNEXES

[…]

Footnotes

[1] In this regard, Writ TP-SA 19 of 2018 [this is a previous ruling of the Appeals Chamber, cited by the Chamber of Recognition] states the following: “as for the expression ‘caused by the armed conflict’, this literally translates into a causality judgment that establishes whether or not the conduct occurred within the framework of the conflict” (paragraph 11.13).

[2] In this regard, Writ TP-SA 19 of 2018 states the following: “when analysing the nexus of a conduct with non-international armed conflict under the criterion ‘occasioned by’, this must be understood as having a close and sufficient relationship with its development” (paragraph 11.12).

[3] Citing Ruling C-007 of 2018 of the Colombian Constitutional Court, Writ TP-SA 19 of 2018 noted the following about the term “directly”: “its literal interpretation would mean, much like the expression ‘caused by’, an evaluation of a causality judgment between the conduct and the conflict to establish factually whether the conduct originated in the framework of the conflict and, thereby, ascertain the nexus”.

[4] Finally, regarding the “indirect” relationship, Writ TP-SA 19 of 2018 points out that the context of this concept has not been elaborated upon. However, the writ clarified that “the possible indeterminacy is limited with the application of the criteria set forth in the aforementioned Transitory Article 23 of Legislative Act 01 of 2017” by resorting to a systematic interpretation of this provision and, additionally, it proposes a “concept of direct and indirect participation in hostilities as an accessory material criterion to of a conduct with the conflict.”

Discussion

I. Classification of the Situation and Applicable Law:

1. *(Paras 10-15)*

1. How would you classify the situation between the armed forces of Colombia and the FARC-EP? At the time of the facts 2005-2008? (GC I-IV, Common Art. 3; P II, Arts 1 and 2) (See also Colombia, FARC Guerrillas “Return To Arms”)
2. What is the applicable law? Does International human rights law (IHRL) apply in times of armed conflict? In the same way as in times of peace? Is Colombia´s National Army bound by IHRL?
3. (*Paras 545-548*) Which rules has the SJP jurisdiction to apply? How does the SJP determine the legal qualification of conducts?
4. (*Paras 545-548*) Is IHL the lex specialis in non-international armed conflicts? How is the interplay between IHL and IHRL approached by the Judicial Panel? Did it consider that IHL displace IHRL? (See for example the analysis of the recruitment and participation of children paras 569-588)

5. (*Para. 15*) The SJP has competence over which facts? Which were the facts determined by the Judicial Panel? (*Paras 10, 131*)

II. Gender and Sexual Orientation in Armed Conflicts

2. (*Paras 528–536*) How are people with diverse sexual orientation or gender identity impacted by an armed conflict? Do they have special protection under IHL and IHRL (*paras 624-626*)? (GC I-IV, Common Art. 3; P II, Art. 2(1); CIHL, Rule 88)

1. (*Paras 533, 634-640*) Was the treatment of José Rubiel Llanos an IHL violation? A war crime? (GC I-IV, Common Art. 3; P II, Art. 4(2)(a); CIHL, Rules 89 and 90)
2. (*Paras 634- 640*) Did the treatment of José Rubiel Llanos have a nexus with the armed conflict?

III. Children and Armed Conflict

3. (*Paras 537–538*) Do children enjoy of special protection under IHL, IHRL? How are children and minors impacted by an armed conflict? (GC I-IV, Common Art. 3; P II, Art. 4(3); CIHL, Rules 135-137; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict)

4. (*Paras 563-607*) Did the use of minors in the case amount to an IHL violation?

1. (*Para. 564*) Are all IHL violations war crimes? How do you determine if the violation amounts to a war crime? According to the ICTY? According to the Chamber of Appeals of the SJP? Which test do you prefer? (See ICTY, The Prosecutor v. Tadić, Appeals Chamber, Jurisdiction, para. 94)
2. (*Paras 571-572*) Is the recruitment and participation of children prohibited by IHL? Does the participation have to be direct? What is an indirect participation in the hostilities? Is there a difference with IHL of IACs? (P II, Art. 4(3)(c); P I, Art. 77(2); CIHL, Rules 136 and 137)
3. Are children allowed to voluntarily join military forces under IHL? To serve as fighters? To be spies? To cook in the military camp? Do your answers change for armed groups? Does IHL distinguish between children who willingly took up weapons and those who have been forced? (P II, Art. 4(3)(c) and (d))
4. (*Paras 573–576*) Is the use or recruitment of children also prohibited by IHRL and ICL? Are the prohibitions the same as in IHL? (ICC Statute, Art. 8(2)(e)(vii); Convention on the Rights of the Child, Art. 38(3); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Arts 1, 2 and 4(1))
5. What is the age threshold used for child soldiers? How has the Optional Protocol to the Convention on the Rights of the Child affected that threshold? (P II, Art. 4(3)(c) and (d); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict)
6. (*Paras 583-588*) Do you agree with the Special Jurisdiction that there's a customary rule that prohibits the recruitment and participation of children until the age of 18? Why would this matter for the case if the Colombian Criminal Code prohibits such recruitment?
7. (*Paras 597-601, 607*) Does the conduct of minors, who tricked victims and handed them over to the National Army, or that mentioned in para. 601 constitute direct or indirect participation in hostilities? Did the use of the minors mentioned by the Judicial Panel constitute a violation of IHL? A war crime? In the specific cases of FDJB and XYZ? (*Paras 598, 600*)

5. Are the children mentioned in this case protected against the effects of hostilities as civilians even if the Special Jurisdiction considered that the military violated IHL because it made them directly or indirectly participate in hostilities? (See also ICC, The Prosecutor v. Thomas Lubanga Dyilo paras 627-628)

IV. Persons with Disabilities and Armed Conflict

6. (*Paras 540–541*) Do persons with disabilities enjoy of special protection under IHL, IHRL? How are persons with disabilities impacted by an armed conflict? (Convention on the Rights of Persons with Disabilities; GC I-IV, Common Art. 3; GC IV, Art. 16(1))

1. In IACs are persons with disabilities protected by GC IV, Art. 16(1)?
2. Does the obligation of humane treatment without any adverse distinction in Common Art. 3 prohibit an adverse treatment of persons with disabilities? To treat persons with and without disabilities always in the same way?

V. The Nexus with the Armed Conflict

7. (*Para. 603*) Is the "nexus requirement" only an element of war crimes or is it also a condition for the applicability of IHL?

1. Does IHL regulate during an armed conflict a conduct that has no link to the conflict?
2. Is there one single definition of the nexus requirement or are there different definitions for different rules? (Compare for instance the wording of P I, Art. 75(1) with P II, Art. 6(1))
3. Is the nexus a requirement for the applicability of all IHL rules, or only some rules?
4. Is the existence of a nexus with an ongoing armed conflict sufficient to establish the applicability of IHL to a certain conduct regardless of the location? Or is it also necessary to ascertain that the conduct falls within the geographical scope of application of IHL? In other words, is the nexus additional or alternative to considerations of the geographical applicability of IHL (and possibly of other considerations, such as personal applicability)? At the same time, does the nexus depend on material, temporal, personal and geographical factors?

8. (*Paras 15, 603, 607*) Why was the nexus requirement relevant in the analysis of the Special Jurisdiction? What is the purpose of the nexus requirement for war crimes?

9. (*Paras 15, 603-607*) What criteria did the Special Jurisdiction use when assessing the nexus requirement? Do you think these were correct? Do you agree with the Judicial Panel´s conclusion of the nexus of the conducts with the armed conflict?

VI. Classification of Persons

10. (*Para. 554*) What are the rule of distinction and the principle of humanity? (GC I-IV, Common Art. 3; P II, Art. 4; CIHL, Rules 1 and 7)

11. (*Paras 552–561*) Who is protected by IHL in NIACs? Is the concept the same as civilians in NIACs?

(CIHL, Rule 5; P II, Arts 1 and 4)

1. (*Paras 556-557*) Who can under Colombia´s domestic law be a victim of a war crime? Under the ICC Statute? Are there differences among them (Colombia´s domestic law, the ICC Statute and IHL)?
2. (*Paras 132-221, 560-561*) Are all the groups of victims identified by the Judicial Panel protected by Common Art. 3 and Art. 4 of Protocol II? Do the categories mentioned in para. 560 lead to any difference under IHL? Under which circumstances would they lose their protection? What information could have allowed the Army to conclude that the victims lost their protection as civilians? (GC I-IV, Common Art. 3; P II, Arts 1 and 4; CIHL, Rule 5) (See Interpretive Guidance on the Notion of Direct Participation in Hostilities)
3. (*Paras 552–561*) Did the killings identified by the Special Jurisdiction violate IHL? Are the killings war crimes? In the specific case of Jose Albeiro Joya Rodríguez and the unidentified women? (*Paras 205, 210*) (GC I-IV, Common Art. 3; P II, Art. 4; CIHL, Rule 89)