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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Mapiripan Massacre v. Colombia
Doc. Type:	Judgement (Merits, Reparations, and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Manuel E. Ventura Robles; Gustavo Zafra Roldan Judge Cecilia Medina Quiroga informed the Court that for reasons of force majeure she could not attend the LXVIII Regular Session of the Court, for which reason she did not participate in the deliberation, decision, and signing of the instant Judgment. Likewise, for reasons of force majeure, Judge Diego Garcia-Sayan did not participate in the deliberation, decision, and signing of the instant Judgment.
Dated:	15 September 2005
Citation:	Mapiripan Massacre v. Colombia, Judgement (IACtHR, 15 Sep. 2005)
Represented by:	APPLICANTS: the Colectivo de Abogados “Jose Alvear Restrepo” and the Center for Justice and International Law

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In the case of the “Mapiripán Massacre”,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 29, 31, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), issues the following Judgment.

I. INTRODUCTION OF THE CASE

1. On September 5, 2003, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed before the Court the application in this case against the State of Colombia (hereinafter “the State” or “Colombia”), which originated in complaint No. 12.250, received at the Secretariat of the Commission on October 6, 1999.

2. The Commission filed the application in this case for the Court to decide whether the State breached Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, to the detriment of the alleged victims of the alleged massacre carried out in Mapiripán, stated in the application. The Commission also asked

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the Court to decide whether the State breached Articles 8.1 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in combination with Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the alleged victims of the alleged massacre and their next of kin. When it filed the application, the Commission pointed out that "between July 15 and 20, 1997 […] approximately one hundred members of the Autodefensas Unidas de Colombia[, …] with the collaboration and acquiescence of agents of the […] State, deprived of their liberty, tortured, and murdered at least 49 civilians, after which they destroyed their bodies and threw their remains into the Guaviare River, in the Municipality of Mapiripán, Department of Meta". The Commission also pointed out that the alleged victims were "approximately 49 individuals", of whom it identified ten individuals and some of their next of kin.

3. The Commission also asked the Court, in accordance with Article 63(1) of the Convention, to order the State to carry out several measures of pecuniary and non-pecuniary reparation, such as payment of costs and expenses incurred by the next of kin of the alleged victims under both domestic and international venues.

II. COMPETENCE

4. The Court is competent, under the terms of Article 62(3) of the Convention, to hear the instant case, since Colombia has been a State Party to the American Convention since July 31, 1973, and it accepted the adjudicatory jurisdiction of the Court on June 21,1985.

III. PROCEDURE BEFORE THE COMMISSION

5. On October 6, 1999 the Colectivo de Abogados "José Alvear Restrepo" and the Center for Justice and International Law (hereinafter "the petitioners") filed a complaint before the Inter-American Commission.

6. On February 22, 2001, during its 110th session, the Commission adopted Admissibility Report Nº 34/01, in which it decided "that the case was admissible, in accordance with the requirements set forth in Articles 46 and 47 of the American Convention and with regard to the [alleged] violation of Articles 4, 5, 7, 8(1), 25 and 1(1) of [that Convention] to the detriment of 49 individuals [allegedly] executed at Mapiripán […]".

7. On March 9, 2001 the Commission made itself available to the parties with the aim of attempting to reach a friendly settlement, in accordance with the American Convention and its own Rules of Procedure. The parties expressed no interest in such a settlement.

8. On February 8, 2002 the Commission issued precautionary measures in favor of Marco Tulio Bustos Ortiz, Jairo Javier Bustos Acuña and María Esneda Bustos, witnesses in the judicial proceeding for the massacre committed in Mapiripán.

9. On April 12, 2002 the Commission issued precautionary measures in favor of Lieutenant Colonel Hernán Orozco Castro, who was the acting commander of the "Joaquín París" battalion at the time of the alleged massacre.

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10. On March 4, 2003, during its 117th regular session and in accordance with Article 50 of the Convention, the Commission adopted substantive Report No. 38/03, in which it found that:

[…] the Republic of Colombia is responsible for the violation of the rights to life, to humane treatment and to the personal liberty of the victims in the massacre committed in Mapiripán between July 15 and 20, 1997, embodied in Articles 4, 5 and 7 of the American Convention. The State is also responsible for abridgment of the right to due process and of the right to judicial protection of the victims and their next of kin, set forth in Articles 8 and 25 of the American Convention, as well as for non-fulfillment of its obligation to ensure respect for the rights set forth in said Treaty, pursuant to its Article 1(1).

Based on the analysis and conclusions of the Report, the Commission recommended that the State:

1. Conduct a complete, effective, and impartial investigation through ordinary legal proceedings, with the aim of trying and punishing all those responsible for the massacre committed against approximately 49 victims in the municipality of Mapiripán, Department of Meta;
2. Take such steps as may be necessary for those affected to receive adequate reparations for the violations committed by the State;
3. Take such steps as may be necessary to avoid repetition of similar acts, in accordance with the duty of prevention and guarantee of the basic rights embodied in the American Convention, as well as such measures as may be necessary to fully comply with the doctrine developed by the Colombian Constitutional Court and by this Commission regarding investigation and prosecution of similar cases by regular criminal justice;

11. On June 5, 2003 the Commission sent to the State substantive Report No. 38/03 and gave it two months time to report on "the steps taken to comply with the recommendations made." In a letter that same day, the Commission informed the petitioners that it had adopted the report and sent it to the State, and it inquired about their position regarding the possibility of filing the case before the Inter-American Court if the State did not carry out the Commission's recommendations.

12. On July 9, 2003 the petitioners replied to the Commission's June 5, 2003 letter, and they stated that it was pertinent to file the case before the Inter-American Court.

13. On August 22, 2003, after the Commission had granted two extensions, the State filed its reply regarding the steps taken to carry out the recommendations issued in Report 38/03.

14. On September 5, 2003, after analyzing the State's response to said recommendations, the Commission decided to bring the instant case before the jurisdiction of the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

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15. On September 5, 2003 the Commission filed the application before the Court. The Commission appointed Robert K. Goldman and Santiago A. Canton as its delegates, and Ariel Dulitzky and Verónica Gómez as its legal advisors.

16. On October 28, 2003 the Secretariat of the Court (hereinafter "the Secretariat"), once the President of the Court (hereinafter "the President") conducted a preliminary examination of the application, forwarded it to the State together with the appendixes and informed the State of the deadline to answer the application and to appoint its representatives in the proceeding. That same day, the Secretariat, under instructions by the President, informed the State of its right to appoint an ad hoc Judge to participate in the process of considering the case.

17. On October 28, 2003, in accordance with the provisions set forth in Article 35(1) d) and e) of the Rules of Procedure, the Secretariat notified the application to the representatives of some of the next of kin of the alleged victims (hereinafter "the representatives"), that is: the Colectivo de Abogados "José Alvear Restrepo" and the Center for Justice and International Law (CEJIL).

18. On December 1, 2003 the State appointed Luz Marina Gil García as its Agent.

19. On December 18, 2003 the State, after being granted an extension, appointed Gustavo Zafra Roldan as Judge ad hoc. That same day it appointed Claudia Hernández Aguilar as Deputy Agent.

20. On January 26, 2004 the representatives, after being granted an extension, filed their written brief containing pleadings, motions, and evidence (hereinafter "written brief containing pleadings and motions") in which, in addition to the violations alleged by the Inter-American Commission, they alleged violation of Articles 19 and 22 of the American Convention.

21. On April 2, 2004 the State filed its brief with preliminary objections, its reply to the application and its comments on the pleadings and motions.

22. On May 19, 2004 the Commission and the representatives filed their written pleadings on the preliminary objections.

23. On May 28, 2004 Colombia submitted a "brief in response to the observations by the representatives with regard to the preliminary objections raised by the State". In this regard, on July 23, 2004 the President decided that the arguments raised by the representatives in their written brief containing pleadings and motions, as well as their observations on the preliminary objections, would be assessed at the appropriate time; he also decided not to accept the May 28, 2004 brief by the State, as it was a written procedural act not foreseen in the Rules of Procedure; and that the State will have the opportunity to refer to the pleadings of the parties when it submits its oral and written final pleadings.

24. On January 26, 2005 the representatives requested that, "in accordance with the discretionary powers set forth in Article 45 of the Rules of Procedure of the Court, [the latter] order [the] State [to] provide all the information it has regarding [the various probatory steps

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ordered on July 30, 2004 by the Specialized Prosecutor of the Human Rights and International Humanitarian Law Unit of the Office of the Government Attorney [Fiscalía General de la Nación] of Colombia and on the public hearing being held by the Ninth Criminal Court of the Specialized Circuit of Bogotá against General Jaime Humberto Uscátegui Ramírez". On January 31, 2005 the Secretariat, under instructions by the President, asked the State and the Inter-American Commission to submit their comments on the matter.

25. On January 28, 2005 the President issued an Order in which, in accordance with Articles 44 and 47(3) of the Rules of Procedure, he summoned the witnesses offered by the representatives, Carmen Johanna Jaramillo Giraldo, Esther Pinzón López, Sara Paola Pinzón López, María Teresa Pinzón López, Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Nadia Marina Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johanna Marina Valencia Sanmiguel, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, Roland Andrés Valencia Sanmiguel, Ronald Mayiber Valencia Sanmiguel, and Luis Guillermo Pérez, as well as expert witnesses Ana Deutsch and Robin Kirk, to render their testimony and expert opinions through statements made before a notary public (affidavits), which should be sent by the representatives no later than February 15, 2005. The President also granted a non-extendable 7-day period, beginning on the date said statements were received, for the Commission and the State to submit such comments as they deemed pertinent. The President also summoned the Commission, the representatives and the State to a public hearing to be held at the seat of the Inter-American Court beginning on March 7, 2005 at 8:45 a.m., to hear their final oral pleadings on the preliminary objections and merits, reparations, and costs in the instant case, as well as the testimony of Nory Girlado de Jaramillo, Marina Sanmiguel Duarte, and Viviana Barrera Cruz, offered by the Commission and by the representatives; Luz Mery Pinzón López and Mariela Contreras Cruz, offered by the representatives, and Manuel José Bonnet Locarno, Harold Bedoya Pizarro, and Camilo Osorio Isaza, offered by the State; as well as the expert opinion of Federico Andreu, proposed by the representatives. The President also informed the parties that they had a non-extendable period up to April 8, 2005 to submit their final written pleadings with regard to the preliminary objections and merits, reparations, and costs.

26. On February 2, 2005 the State submitted a brief in which it partially desisted from the testimonial evidence offered with regard to Manuel José Bonnet Locarno and Harold Bedoya Pizarro, and at the same time it requested authorization to replace the statement by Camilo Osorio Isaza with that of Gustavo Morales Marín.

27. On February 9 and 10, 2005, in response to a request by the Secretariat, under instructions by the President, the representatives and the Commission submitted their comments on said requests regarding the testimony offered as evidence by the State (supra para. 26).

28. On February 10, 2005 the State forwarded some of the information requested by the representatives in their January 26, 2005 brief (supra para. 24).

29. On February 15, 2005 the representatives forwarded the statements rendered before a notary public (affidavits) and the sworn statements requested by the President (supra para. 25), except those of Rusbel Asdrúbal Martínez Contreras and Roland Mayiber Valencia Sanmiguel "for reasons of force majeure".

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30. On February 18, 2005 the President issued an Order in which he accepted the partial withdrawal by the State of the offer to present Manuel José Bonnet Locarno and Harold Bedoya Pizarro as witnesses. He also accepted the State's proposal to substitute Camilo Osorio Isaza with Gustavo Morales Marín and ordered the latter to appear as a witness at the public hearing on preliminary objections and merits, reparations, and costs that had been summoned (supra para. 25). The President also ordered the State to submit, no later than February 25, 2005, all the information it had regarding the probatory steps ordered on July 30, 2004 by the Specialized Prosecutor of the Human Rights and International Humanitarian Law Unit of the Government Attorney's Office of Colombia; the steps taken in Mapiripán and in the Guaviare River regarding identification of the alleged victims and the filing of complaints by the townspeople; as well as the steps regarding change of the court for the proceeding and the hearing that was taking place before the Ninth Criminal Court of the Specialized Circuit Bogotá against retired General Jaime Humberto Uscátegui for his alleged participation in the alleged massacre; specifically, information regarding the "methodology and outcome of the steps taken in the Guaviare River and Mapiripán."

31. On February 23, 2005 the State appointed Dionisio Araujo as its Deputy Agent and Héctor Adolfo Sintura Varela, Sonia Pereira and Margarita Manjarrez as its advisors.

32. On March 4, 2005 the State submitted its comments on the sworn statements submitted by the representatives (supra paras. 25 and 29).

33. On March 4, 2005 the State filed a brief, in which it pointed out that:

[...] based on the decisions issued by the domestic judicial and disciplinary authorities and due to the facts that took place in the municipality of Mapiripán between July 15 and 20, 1997, [...] it publicly and explicitly states the following:
1. With regard to the Preliminary objections raised by the State:
• It withdraws the first Preliminary Objection regarding undue application of Articles 50 and 51 of the American Convention, and
• It ratifies and maintains the second Preliminary Objection regarding non-exhaustion of domestic remedies, filed by the Colombian State.
2. It acknowledges its international responsibility for violation of Articles 4(1), 5(1) and [5](2), and 7 (1) and [7](2) of the American Convention on Human Rights, in connection with the facts that took place in Mapiripán between July 15 and 20, 1997.
3. It reasserts as its State policy that of promoting and protecting human rights and it expresses its deep respect and sympathy for the victims of the facts that took place in Mapiripán between July 15 and 20, 1997, and remembering them it expresses its regret and apologizes to their next of kin and to Colombian society.
4. It asks the […] Court to take this acknowledgment into consideration and give it full legal effect, therefore limiting the hearings on the merits and the subsequent proceeding to the study of reparations and costs, as well as to pleadings on the merits regarding compliance by the State with its treaty commitments in connection with Articles 8(1) and 25.

34. On March 7, 2005 the State filed a brief, in which it said:

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[...] based on the decisions issued by the domestic judicial and disciplinary authorities and due to the facts stated in section B of Chapter VI "The Facts of July 1997" of the application filed by the Inter-American Commission on Human Rights [...] it publicly and explicitly states the following

1. With regard to the Preliminary objections raised by the State:

• It withdraws the first Preliminary Objection regarding undue application of Articles 50 and 51 of the American Convention, and

• It maintains the second Preliminary Objection regarding non-exhaustion of domestic remedies, filed by the Colombian State.

2. It acknowledges its international responsibility for violation of Articles 4(1), 5(1) and [5](2), and 7 (1) and [7](2) of the American Convention on Human Rights, in connection with the facts that took place in Mapiripán in July 1997.

3. It reasserts as its State policy that of promoting and protecting human rights and it expresses its deep respect and sympathy for the victims of the facts that took place in Mapiripán in July 1997, and remembering them it expresses its regret and apologizes to their next of kin and to Colombian society.

4. It asks the […] Court to take this acknowledgment into consideration and give it full legal effect, therefore limiting the hearings on the merits and the subsequent proceeding to the study of reparations and costs, as well as to pleadings on the merits regarding compliance by the State with its treaty commitments in connection with Articles 8(1) and 25.

5. It specifies that this declaration by the State does not entail an assessment or appraisal of individual criminal liabilities.

35. The public hearing on preliminary objections and on the acknowledgment of responsibility by the State was held on March 7, 2005, and the representatives, the Commission and the State were present at this hearing. There appeared before the Court: a) on behalf of the Inter-American Commission: Víctor H. Madrigal Borloz and Juan Pablo Albán, legal advisors, and Verónica Gómez, legal advisor; b) on behalf of the representatives: Rafael Barrios Mendivil and Eduardo Carreño, and Jomary Ortegón, from the Corporación Colectivo de Abogados "José Alvear Restrepo"; and Viviana Krsticevic and Roxana Altholz, of the Center for Justice and International Law, and c) on behalf of the State: Luz Marina Gil García, Agent; Dionisio Araujo, Deputy Agent; Héctor Adolfo Sintura Varela, legal advisor; and Sonia Pereira and Margarita Manjarrez, legal advisors.

36. At the outset of the public hearing, the parties stated their positions and comments on the acknowledgment of responsibility by the State and the preliminary objections. In this regard, the Commission highlighted the willingness expressed by the State and appreciated the importance of its statement, as it constitutes a step toward fulfillment of its international obligations. It also expressed its special appreciation for the words expressed in remembrance of the alleged victims and to apologize to their next of kin and to Colombian society. On the other hand, it deemed that the merits stage should remain open, to address all the factual and legal arguments of the representatives and of the Commission, and the responsibility of the State regarding all the identified and unidentified individuals, mentioned as alleged victims in the application and in the written brief containing pleadings and motions. The representatives, in turn, expressed their appreciation for the remembrance of the alleged victims and the apology to their next of kin and

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to Colombian society. They added that while the statement expressed the willingness of the State to move forward in elucidation of the case, it was "unsatisfactory" regarding the key factual and legal issues that are pertinent to resolve the case. Finally, they asked that the stage of the proceeding continue in broad terms, addressing both factual and legal issues, as well as reparations. On the other hand, the Commission and the representatives stated that there was a fundamental contradiction between acknowledgment of responsibility regarding certain rights and maintaining certain preliminary objections. The State, in turn, recognized the autonomy of the Court to assess the legal effects of the acknowledgment of responsibility by the State, and ratified the request made in its statement regarding said legal effects. It also expressed that if the Court considered the preliminary objection to be in order, the Court would lose its competence to decide on compensation, but the State would be able to establish said reparations based on its domestic legislation.

37. On March 7, 2005 the Court issued a Judgment on Preliminary Objections and Acknowledgment of Responsibility [FN1], in which it made the following observations:

25. The State has desisted from the first preliminary objection regarding "undue application of Articles 50 and 51 of the American Convention" and it has ratified its second preliminary objection regarding non-exhaustion of domestic remedies.
26. The State has also acknowledged its international responsibility for the violation of Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the American Convention on Human Rights, in connection with the facts mentioned in section B of Chapter VI of the application filed by the Commission. […]
29. Under the terms stated by the parties, the Court notes that there continues to be a dispute among them about the preliminary objection regarding non-exhaustion of domestic remedies; the scope of the acknowledgment of responsibility of the State regarding the facts that took place in the instant case that were not included in the acknowledgment of responsibility by the State; the alleged violations of Articles 1(1), 8(1) and 25 of the American Convention; the alleged violations of Articles 19 and 22 of said treaty alleged by the representatives, as well as regarding reparations and costs.
30. On the other hand, by acknowledging responsibility in the instant case, the State has implicitly accepted the full competence of the Court to hear the instant case, for which reason the second preliminary objection raised by the State is no longer a preliminary issue. Furthermore, the content of said objection is closely linked to the merits of the instant matter, especially with regard to the alleged violation of Articles 8 and 25 of the Convention. Therefore, said preliminary objection must be dismissed and the Court must continue to hear the merits, reparations, and costs in the instant case.
31. Therefore, while said acknowledgment by the State does not interrupt the process of receiving testimony and expert opinions as ordered, the purpose of said testimony and expert opinions set forth in the President's Order must be restricted as appropriate, regarding those parts of the merits, reparations, and costs with regard to which there continues to be a dispute among the parties.

Therefore, the Court, unanimously:

F[OUND]:

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1. The there is no longer any dispute about the preliminary objection regarding "undue application of Articles 50 and 51 of the American Convention".
AND [DECIDED]:
2. To accept, for all its effects, the decision of the State to desist from the first preliminary objection regarding "undue application of Articles 50 and 51 of the American Convention".
3. To accept, for all its effects, the acknowledgment of international responsibility by the State, under the terms set forth in paragraphs 29 and 30 of the instant Judgment.
4. To dismiss the second preliminary objection regarding exhaustion of domestic remedies and to continue hearing the instant case regarding the scope of the acknowledgment of responsibility of the State with regard to the facts that took place in the instant case that were not included in the acknowledgment of responsibility by the State; the alleged violations of Articles 1(1), 8(1) and 25 of the American Convention; the alleged violations of Articles 19 and 22 of said treaty alleged by the representatives, as well as regarding reparations and costs.
5. To hold the public hearing summoned by the January 28, 2005 Order of the President of the Court, as well as the other procedural acts regarding the merits, reparations, and costs in the instant case. The object of the testimony and expert opinions will be restricted as appropriate, regarding those parts of the merits, reparations, and costs with regard to which there is still a dispute among the parties.
6. To notify the instant Order to the State of Colombia, to the Inter-American Commission on Human Rights and to the representatives of the alleged victims and their next of kin.

[FN1] See Case of the "Mapiripán Massacre". Preliminary Objections and Acknowledgment of Responsibility. Judgment of March 7, 2004. Series C No. 122.
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38. Once said Judgment was issued, the Court held the public hearing on the merits, reparations, and costs, and it heard the testimony and expert opinions of the persons summoned to appear before the Court (supra paras. 25 and 30).

39. On March 23, 2005 Federico Andreu submitted a written summary of the expert opinion given during the public hearing.

40. On April 8, 2005 the State, the Commission and the representatives submitted their final written pleadings.

41. On May 9, 2005 the "Manuel Cepeda Vargas" Foundation submitted an amicus curiae in the instant case.

42. On May 15, 2005 the Centro Internacional por la Justicia Transicional submitted an amicus curiae prepared by Paul van Zyl, Lisa Magarrel and Leonardo Filippini, for it to be taken into consideration in the instant case.

43. On August 5, 2005 the Secretariat, under instructions by the President of the Court and in accordance with the terms of Article 45(2) of the Rules of Procedure of the Court, asked the representatives and the State to send certain information and several documents, no later than

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August 19, 2005, as evidence to facilitate adjudication of the case. Specifically, it requested information on the ongoing criminal proceeding under regular criminal justice and on the administrative-law proceedings initiated by next of kin of alleged victims; information on possible new necropsies; names of the next of kin of alleged victims who had allegedly been displaced and on whether they were or had been registered as such and/or whether they had received any sort of aid or support from the State due to said situation; as well as birth, marriage, and death certificates.

44. On August 22, 2005 the representatives filed a brief in which they requested that "adoption of Law 975 of 2005 […] by Colombia's National Congress […] and its signing by the President of the Republic" be considered a supervening fact in the instant case, and that the Court rule on the matter in the Judgment. On August 23, 2005, under instructions by the President, the Secretariat granted a five day period for the Inter-American Commission and the State to submit such comments as they deemed pertinent in this regard.

45. On August 22 and 24, 2005 the representatives and the State, respectively, sent certain information and a series of documents, in response to the request for evidence to facilitate adjudication (supra para. 43).

46. On August 30, 2005 the Fédération Internationale des Ligues des Droits de l'Homme submitted an amicus curiae.

47. On September 2 and 7, 2005, after being granted an extension, the Commission and the State, respectively, filed their comments on the representatives' request regarding enactment of Law 975 of 2005 (supra para. 44).

V. PROVISIONAL MEASURES

48. On February 4, 2005 the representatives requested provisional measures to protect the lives and the right to humane treatment of all the witnesses summoned in the instant case, as well as their next of kin (supra para. 25).

49. On February 4, 2005 the President issued an Order for urgent measures. [FN2] On March 2, 2005 the State submitted its first report. On June 17 and 24, 2005, after several reminders, the representatives and the Commission, respectively, submitted their comments on the first report by the State on the urgent measures ordered by the President.

[FN2] These included the State taking such steps as might be necessary, forthwith, to protect the lives and right to humane treatment of the following individuals and their next of kin: Carmen Johana Jaramillo Giraldo, Esther Pinzón López, Sara Paola Pinzón López, María Teresa Pinzón López, Yur Mary Herrera Contreras, Zully Herrera Contreras, Maryuri Caicedo Contreras, Nadia Marina Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johana Marina Valencia Sanmiguel, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, Roland Andrés Valencia Sanmiguel, Ronald Mayiber Valencia Sanmiguel, Luis Guillermo Pérez, Nory Giraldo de Jaramillo, Marina San Miguel Duarte, Viviana Barrera Cruz, Luz Mery Pinzón López, and

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Mariela Contreras Cruz. The State was also ordered to investigate the facts that gave rise to said urgent measures, and to identify those responsible and punish them as appropriate. See Case of the "Mapiripán Massacre". Provisional Measures. February 4, 2005 Order of the President of the Inter-American Court of Human Rights.

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50. On June 27, 2005 the Court issued an Order in which it ratified the President's February 4, 2005 Order. [FN3] On August 24, 2005 the State submitted its second report. Said provisional measures are in force at the time the instant Judgment is issued.

[FN3] See Case of the "Mapiripán Massacre". Provisional Measures. June 27, 2005 Order of the Inter-American Court of Human Rights.

VI. PRIOR CONSIDERATIONS

51. In addition to the Articles of the Convention that the Commission argued in its application had been breached, the representatives have alleged that the State breached Articles 19 and 22 of said treaty.

52. The State also made a number of comments throughout the proceeding before the Court regarding participation of the next of kin of the alleged victims: in its reply to the application, Colombia asked the Court to reject the written brief containing pleadings and motions of the representatives and to return it for the brief to be adjusted to the terms set forth in Article 23 of the Rules of Procedure, deeming that it constituted a true application, which in its opinion went beyond its procedural capacities under the Convention.

53. In its oral pleadings, the State made the following considerations:

The American Convention constitutes the basis and juridical framework for the Rules of Procedures of the Court and of the Commission and Article 61 sets forth that only the States party and the Commission have the right to bring a case before the Court for it to decide. The Rules of Procedure of the Court, in Article 23, have reflected […] the will expressed by the States, to provide greater participation of the victims in the proceeding before the Court and have established that, once the application has been accepted, the alleged victims, their next of kin or their representatives can submit their requests, pleadings and evidence in an autonomous manner. In the case of the inter-American system, all the juridical pleadings of the petitioners, especially regarding the rights embodied in the Convention that were allegedly breached, must be submitted during the proceeding before the Commission. Thus, it is during said stage that the State can also submit its arguments about them, and the Commission can issue a ruling on each and every accusation. This ensures legal certainty, procedural equality and the right to defense, as the State must know the charges against it and these are expressed in the claims, precisely, in the applications.
Likewise, the proceeding before the Inter-American Court should […] remain within the limits contained in the Commission's substantive report and of the application filed by the latter before

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the Court, because it is precisely Article 61 of the Convention that leads to the principle that when a case is brought before the Court, the Commission or the States establish the object and limits of the proceeding; that is, the facts that must be proven by the parties and analyzed by the Court, as well as the rights whose violation is to be elucidated. Article 33 of the Rules of Procedure of the Court reflects this, and establishes that the claims and legal grounds, among other matters, will be stated in the application. […] The Rules of Procedure of the Court […] granted the petitioners autonomous representation for a specific purpose: to submit requests, pleadings, and evidence. […] This in no way means that the provisions of the Convention have been modified.

Article 23 of the Rules of Procedure […] cannot be interpreted as granting the petitioners the capacity to submit claims other than those included in the application. For the State, it is clear that the requests, pleadings, and evidence mentioned by this article are restricted […] to what was stated in the Commission's application, unless they are supervening facts and evidence. The opposite would mean that the Commission and the petitioners would both be applicants filing their separate applications.

If the Court were to accept the interpretation that the petitioners can make additional legal determinations, the capacity of the Commission or of the State to submit the application would be meaningless, as it would not constitute the framework of the proceeding, which is […] what Article 61 […] of the Convention specifies. This article is in force [and] it is fully applicable as long as it has not been annulled in another international instrument at the same level. […]

To summarize, the brief submitted in this case by the representatives is not just a written brief containing pleadings, motions, and evidence, [but rather] it goes beyond the capacities set forth in the Convention and the Rules of Procedure, as it includes new claims or new rights that have not been analyzed by the Commission and that in fact constitute a true application.

In addition to the aforementioned arguments, another equally important one is that this creates a procedural imbalance, as it entails that the State must actually answer two applications. This imbalance is not corrected exclusively by granting additional time for observations. The State must actually address and is addressing one more party to the proceeding.

Due to all the above, [the] State […] asks the […] Court to […] consider [that] the capacity of the petitioners to autonomously submit their pleadings to the Court should be restricted to the factual and legal arguments included in the application filed by the Inter-American Commission […] This will ensure respect for the legal framework of its participation, in light of Articles 61(1) of the Convention, 44 and 23 and 33 of the Rules of Procedure of the Court.

54. In its final written pleadings, the State added:

[that] it rejects the account and assessment of the facts contained in section B "The Paramilitary operation in Mapiripán" of the representatives' brief and it asks the […] Court to take into account as proven facts those included in the criminal judgments and disciplinary rulings specified.

The State also rejects the assessments and conclusions included in section C "Destruction of Evidence and Obstruction of Justice," such as the "deliberate ineffectiveness of the State", as well as its decontextualized vision of "Domestic Judicial Actions", and it also firmly rejects the statements included in the section on "Paramilitarism in Colombia," which do not reflect Colombian reality.

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Likewise, the State rejects the accounts of the facts prior to those that took place between July 15 and 20, 1997, which are not the object of the instant case, and which were expressed by the representative of the alleged victims and their next of kin during the public hearings on March 7 and 8, 2005.
Neither the facts stated in the final oral pleadings at the hearing nor those explicitly rejected that were included in the brief constitute supervening facts, that is, facts that took place subsequent to the filing of the application, to filing of the brief by the representatives or to its reply to the application. Instead, they are alleged new facts and as presented, they supposedly took place before the facts that are the object of this case, and in different places. When they so allege these facts, the representatives go beyond their capacity, as their role is subject to the factual limits of the application filed by the Commission, regarding which the State has furthermore accepted the facts contained in section B of Chapter VI, "The Facts of July 1997".
In the case […] of the Five Pensioners versus Peru, a jurisprudence that only has effects inter partes, regarding the inclusion by the petitioners of rights other than those included in the application, the […] Court […] deemed that the petitioners can invoke said rights because it is the individuals who are entitled to the rights embodied in the American Convention. […] The State does not share this aspect of the […] Court's position, as it deems that said interpretation is in contradiction with the provisions set forth in Article 61(1) of the Convention, [since] only the State or the Commission can file the application before the Court […]
[The above] in no way restricts the individuals' entitlement to the rights. The Inter-American system allows all the legal arguments of the petitioners, and especially those regarding the allegedly breached rights under the Convention, to be submitted during the proceeding before the Commission. However, while the application does not have to be identical to the Commission's Report, as the Court itself has stated, it cannot contain references to alleged violations of rights (Concepts of violation) that the State has not been informed of during the proceeding before the Commission, as this would violate the right to object to them at the appropriate time, the above without detriment to application by the Honorable Court of the jura novit curia principle. […]
In our opinion, and with the aim of maintaining procedural balance, legal certainty, and ensuring the right to defense, granting the representatives of the victims the capacity to submit their briefs and furthermore a new application or new facts or rights before the Court as a true substantive party would entail a modification of the role of the Commission as a party in the proceeding before the Court, for it to act as a true Prosecutor (or prosecuting authority), oversight body of the Convention and Auxiliary to the Court, as had been foreseen in Resolution 1701 [of the General Assembly of the OAS in the year 2000], while maintaining the key aspects of the System and the distribution of competence between the two bodies.

55. The State also emphasized that its acknowledgment of responsibility was limited to a chapter of the facts submitted by the Commission in the application and to the violation of three articles, set forth in that application, "as it constitutes the factual and legal basis for the proceeding, and this in no way entails acceptance of the new facts and claims included […] in the brief by the […] representatives".

56. The written brief containing pleadings and motions of the representatives, entitled "Application by the representatives of the next of kin of the victims before the Inter-American Court of Human Rights in case 12,250 'Mapiripán Massacre' against the Republic of Colombia", does not have said nature of an application and it is thus deemed by this Court. In this case, it

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was the Inter-American Commission, and not the representatives, who had the capacity to commence a proceeding before the Court by filing an application strictu sensu. The purpose of said written brief containing pleadings and motions is to make the locus standi in judicio procedural capacity effective, as recognized for the alleged victims, their next of kin or their representatives.

57. With regard to the possibility of participation by the alleged victims, their next of kin or their representatives in the proceedings before the Court, and of alleging other facts or the violation of other rights not included in the application, the Court reiterates its jurisprudence, in which it has established that:

[…] With regard to the facts that are the object of the proceeding, this Court deems, as it has previously, that it is not admissible to allege new facts other than those stated in the application, without detriment to stating those that help explain, clarify or dismiss those mentioned in the application, or respond to the applicant's claims. Supervening facts may be submitted to the Court at any stage of the proceeding before the judgment is issued.
[…] Likewise, with regard to inclusion of rights other than those already included in the Commission's application, this Court has established that the petitioners can invoke said rights. It is they who are entitled to all the rights embodied in the American Convention, and to not admit this would be an undue restriction of their condition of subjects of International Human Rights Law. The above, regarding other rights, is with regard to facts already included in the application.
[…] This Court also has the authority to analyze the possible violation of articles of the Convention not included in the application brief and in the reply to the application, as well as in the written brief containing pleadings and motions of the representatives, based on the iura novit curia principle, firmly supported by international jurisprudence, "in the sense that the judge has the authority and even the duty to apply the legal provisions that are pertinent to a case, even if they are not explicitly invoked by the parties," in the understanding that the parties will always be allowed to submit the pleadings and evidence that they deem pertinent to support their position regarding all the legal provisions examined. [FN4]

[FN4] See Case of the Moiwana Community. Judgment of July 15, 2005. Series C No. 124, para. 91; Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 122; Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, paras. 124 to 126.
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58. In the current stage of evolution of the inter-American system for protection of human rights, the capacity of the alleged victims, their next of kin or their representatives to autonomously submit requests, pleadings and evidence can only be interpreted in a manner consistent with their condition as those truly entitled to the rights set forth in the Convention, and as the beneficiaries of the protection offered by the system, without disregarding the limits established in the Convention regarding their participation or the exercise of the competence of the Court. Once the proceeding has been commenced by the Commission, the possibility of autonomously submitting requests and pleadings before the Court includes that of alleging the

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violation of other provisions of the Convention not included in the application, based on the facts presented in the latter, without this affecting the object of the application or diminishing or violating the State's right to defense, as the State has procedural opportunities to respond to the pleadings of the Commission and of the representatives at all stages of the proceeding. It is ultimately for the Court to decide in each case whether such claims are in order, safeguarding procedural balance among the parties.

59. This Court has the authority to establish on its own the facts of the case and to decide on legal aspects not alleged by the parties, based on the iura novit curia principle. In other words, while the application constitutes the factual framework of the proceeding, it does not limit the authority of the Court to establish the facts of the case, based on the evidence submitted, on the supervening facts, on complementary and contextual evidence in the file, as well as on publicly known or notorious facts, which the Court deems it pertinent to include among said facts.

60. Thus, the Court will also analyze the alleged violation of Articles 19 and 22 of the Convention, raised by the representatives in the instant case (infra paras. 151 to 163 and 168 to 189).

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61. Bearing in mind the circumstances of the instant case, the Court must decide on the scope of the partial acknowledgment of international responsibility by the State (supra paras. 34 and 37).

62. Article 53(2) of the Rules of Procedure establishes that

[i]f the respondent informs the Court of its acquiescence to the claims of the party that has brought the case and to those of the representatives of the alleged victims, their next of kin or their representatives, the Court, after hearing the opinions of the other parties to the case will decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

63. Article 55 of the Rules of Procedure of the Court provides that

[t]he Court, may notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

64. First of all, exercising its adjudicatory function, the Court applies and interprets the American Convention and, when a case has been brought before it, the Court is empowered to find a State Party to the Convention responsible for violating its provisions.

65. Second, the Court, exercising its inherent authority for the international juridical protection of human rights, may establish whether an acknowledgment of international responsibility by a respondent State provides sufficient basis, under the terms of the American

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Convention, to continue or not to continue hearing the merits and establishing reparations and costs. For this purpose, the Court will analyze the situation in each specific case.

66. In cases in which there has been acquiescence and acknowledgment of international responsibility, heard before by the Court, it has established that:

[…] Article 53[2] of the Rules of Procedure refers to a situation in which a respondent State informs the Court of its acquiescence regarding the facts and the claims of the applicant party and, therefore, accepts its international responsibility for breaching the convention, in the terms set forth in the application, a situation that would give rise to early termination of the proceeding regarding the merits of the matter, as set forth in chapter V of the Rules of Procedure. The Court notes that with the provisions of the Rules of Procedure that entered into force on June 1, 2001, the application brief includes the considerations regarding the facts and the points of law as well as the claims regarding the merits of the matter and the requests for the respective reparations and costs. In this regard, when a State acquiesces to the application, it must clearly state whether it does so only regarding the merits of the matter, or whether it also includes reparations and costs. If the acquiescence refers only to the merits of the matter, the Court will consider whether it will continue with the procedural stage of determining reparations and costs.
[…] In light of the evolution of the system for the protection of human rights, where the alleged victims or their next of kin can today autonomously submit their brief with pleadings, motions, and evidence, and wield claims that may or may not coincide with those of the Commission, when there is an acquiescence it must clearly state whether the claims made by the alleged victims or their next of kin are also accepted.
[…] On the other hand, the Rules of Procedure of the Court do not establish any specific moment for the respondent party to state its acquiescence. Therefore, if a State resorts to this procedural act at any stage of the proceeding, this Court, after hearing all the parties, must evaluate and decide its scope in each specific case. [FN5]

[FN5] See Case of Molina Theissen. Judgment of May 4, 2004. Series C No. 106, paras. 41 to 44; Case of the Plan de Sánchez Massacre. Judgment of April 29, 2004. Series C No. 105, paras. 43 to 48, and Case of Myrna Mack Chang. Judgment of November 25, 2003. Series C No. 101, paras. 106 to 108.

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67. In the instant case, as was established when the Judgment on Preliminary Objections and Acknowledgment of Responsibility was issued (supra para. 37), at the very moment in which the State made its acknowledgment of international responsibility, there remained a dispute on an important part of the subject matter of the instant case. Therefore, the Court decided to continue holding the public hearing that had been summoned (supra paras. 37 and 38). Specifically, the Court found that

there continue[d] to be a dispute among [the parties] regarding [the] scope of the acknowledgment of responsibility by the State regarding the facts that took place in the instant case that were not included in the acknowledgment of responsibility by the State; the alleged violations of Articles 1(1), 8(1) and 25 of the American Convention; the alleged violations of

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Articles 19 and 22 of said treaty alleged by the representatives, as well as regarding reparations and costs [FN6].

[FN6] See Case of the "Mapiripán Massacre". Preliminary Objections and Acknowledgment of Responsibility, supra note 1, para. 29.

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68. Subsequently, despite the terms in which said acknowledgment was issued, in its final oral pleadings and briefs the State made a number of statements regarding the responsibility of the State for the facts of the instant case, to the effect that it should not be found responsible for acts that are not directly attributable to Agents of the State, which could call into question the true nature of its partial acknowledgment of responsibility. In view of this, based on the authority reflected in Article 55 of its Rules of Procedure, the Court will establish the scope and juridical effects of said acknowledgment, after clarifying the content of State responsibility in the framework of the American Convention. For this reason, the Court deems it pertinent to open a chapter on the facts of the instant case, encompassing both the facts acknowledged by the State in its acquiescence and those proven by the set of items in the file.

69. Likewise, given the nature of the instant case, the Court deems that issuing a judgment that establishes the truth of the facts and all the points regarding the merits of the matter, as well as the respective consequences, constitutes a form of reparation for the victims of the Mapiripán Massacre and their next of kin and, in turn, a way of avoiding recidivism of similar events.

VII. EVIDENCE

70. Before examining the evidence tendered, in this chapter the Court will refer to several general considerations, in light of the provisions of Articles 44 and 45 of the Rules of Procedure, that are applicable to the specific case, most of which have been developed in the jurisprudence of the Court itself.

71. The principle of adversarial proceedings, which respects the right of the parties to defense, applies to evidentiary matters. Article 44 of the Rules of Procedure takes this principle into account, as regards the moment when evidence must be tendered for there to be equality among the parties. [FN7]

[FN7] See Case of Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 40; Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 106, and Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 43.

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72. According to the practice of the Court, at the start of each procedural stage the parties must state what evidence they will offer, on the first opportunity given to them to make a written statement. Furthermore, exercising the discretionary powers set forth in Article 45 of its Rules of Procedure, the Court or its President may ask the parties for additional items as evidence to

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facilitate adjudication, without this constituting a new opportunity to expand or complement the pleadings, unless the Court explicitly allows this. [FN8]

[FN8] See Case of Acosta Calderón, supra note 7, para. 42; Case of Yatama, supra note 7, para. 107, and Case of Fermín Ramírez, supra note 7, para. 44.

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73. The Court has stated before, with regard to receiving and assessing evidence, that the proceedings before it are not subject to the same formalities as court proceedings under domestic law, and that inclusion of certain items in the body of evidence must be done paying special attention to the circumstances of the specific case and bearing in mind the limits established to ensure respect for legal certainty and procedural balance among the parties. The Court has also taken into account that international jurisprudence, deeming that international courts have the authority to assess and appraise evidence in accordance with the rules of competent analysis, has always avoided a rigid determination of the quantum of evidence necessary as grounds for a decision. This criterion is especially valid with regard to international human rights courts, which –to establish the international responsibility of a State for violations of the person's rights- enjoy broad flexibility in the assessment of the evidence tendered before them regarding the pertinent facts, in accordance with the rules of logic and based on experience. [FN9]

[FN9] See Case of Acosta Calderón, supra note 7, para. 41; Case of Yatama, supra note 7, para. 108, and Case of Fermín Ramírez, supra note 7, para. 45.

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74. On the aforementioned basis, the Court will now examine and assess the items that constitute the body of evidence in the instant case.

A) DOCUMENTARY EVIDENCE

75. As part of the documentary evidence submitted by the parties, the representatives forwarded the statements by next of kin of the alleged victims and of Luis Guillermo Pérez, as well as the expert opinions of expert witnesses Robin Kirk and Ana Deutsch, in response to the Order issued by the President on January 28, 2005 (supra para. 25). The Court will now summarize those statements.

a) María Teresa Pinzón López, sister of Luis Eduardo, Enrique, José Alberto and Jorge Pinzón López

Her mother lived in Mapiripán with her brothers, her sister Luz Mery, the daughter and her spouse. Although she got along very well with her brothers, she "did not visit them because [she] was afraid." She does not recall very well the day she learned what happened to her brothers. It is terrible to remember what happened and try not to think, because "losing a brother is very hard, but losing them all is terrible." Her mother, Teresa López de Pinzón, "became ill [due to] a stroke [and] half her body was paralyzed. She also suffered heart problems [and] a heart attack."

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Losing her four sons “is what killed [her] mother[, who] cried like a child.” Luz Mery, her older sister, who also lost her common-law spouse, “was very nervous [and] was not well psychologically, that destroyed her [and now] she is very depressed;” her personal appearance changed very much, as she saw everything, and that has “damaged and destroyed” her. Nothing is the same anymore in the family, and they live far away. She is afraid to inquire whether those responsible for the facts have been punished, “because […] in Villavicencio there are always ‘paracos’, she thinks that it is dangerous, and she does not want to comment or inquire because she is afraid for her sons.

b) Esther Pinzón López, sister of Luis Eduardo, Enrique, José Alberto and Jorge Pinzón López

When her mother arrived from Mapiripán she was very sad and she told her that on the day of the massacre some hooded individuals came to take her brothers and they did not see them again. Subsequently, her mother began to feel ill: “she arrived in a daze, like in shock, her chest hurt, she went to a doctor but did not tell him about what happened out of fear, she had chest pains, attacks[. S]he was afraid when it rained and she had nightmares.” In this way, her mother “deteriorated” and died due to the massacre.

She, in turn, upon hearing that her brothers were missing, felt “grief, depression [and she felt] lonely, as they were very attentive of [them and] gave them very important things. [Therefore, her] greatest grief is moral, [as her] brothers supported [them] and gave [them] joy.” Furthermore, her mother “suffered very much [and] was strongly affected by the December festivities, birthdays, and all festivities that bring the family together.” Her brothers were very kind to their mother and to all the sisters. They always got together on the most important dates, but now “[they] try not to remember this because it is very ugly.”

Her brothers were “the main bread-earners” and helped the mother and the sisters since the parents separated. Her sister Luz Mery also had a house, and farm animals, but she had to “leave all that and lose it all.” After her brothers’ disappearance they suffered financial difficulties, were quite hungry, and she fell back in her schooling. Furthermore, her mother spent money looking for her children.

She fears that she might suffer an attempt on her life, not for herself but for her children, who would be left alone because their father died.

She does not know whether her brothers are alive, but “if they are dead, even if it is hard for [them] to accept, finding the bodies of the five, burying them, and saying farewell to them would allow [her sisters and herself] to rest.” She asked that those responsible be found and “that they should not ask for pardon [because] they do not deserve forgiveness.” She also asked the Government to do something, not only for the alleged victims in this case, but for the country as a whole, as “these massacres cannot continue.”

c) Sara Paola Pinzón López, sister of Luis Eduardo, Enrique, José Alberto and Jorge Pinzón López

She had a good relationship with her brothers. She has never been in Mapiripán, but they told her of the massacre and that there were “beheaded people, chopped into pieces, that on [her] sister’s farm they took her spouse and her brothers.” After what happened to her sister, her mother and her sister’s daughter left for Villavicencio, where they met her; this “meeting was horrible.”

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Afterwards, they went to Bogotá and went through a tremendous process with their mother, who, due to the facts, suffered a thrombosis, facial paralysis, and half of her body was disabled. Her mother suffered aftereffects and was defensive, nervous, and "drowned" in tears, because it is terrible to lose one's next of kin in that manner; she died "slowly because [of what happened to her sons]," hoping that they might be found to see them again.
[The witness, her mother and her sisters] were financially dependent on her brothers. If her brothers were still alive their lives would be different and they would live somewhat better. She would have continued studying.
She, in turn, has aftereffects, as she is continually imagining things regarding torture and she imagines that all those things happened to her brothers. Christmas was anguishing after what happened. Furthermore, she has told no one of what happened to her brothers because she is afraid that the army is linked to the paramilitary. Villavicencio, where she lives, is dangerous, as "one does not know whom one is [talking to] and people are very mistrustful." For this reason, she says that her brothers are traveling or that they are cousins. She got the SISBEN (Identification and Classification System for Potential Beneficiaries of Social Programs) for displaced persons, and received health care. "The displaced population is inconvenient for the army and the police. [For] them it would be better if no displaced persons were alive, because nobody would open their mouth or say anything." She has not even been able to see a psychologist due to that same fear.
Her sister Luz Mery "lost everything, she liked the countryside, she had her things, her country property, […] she lost her spouse, lost her brothers, and financially she was left with almost nothing." Afterwards, her sister became quieter and her relationships with people became distant. The witness would like to know why her brothers were taken away and to know what they did to them; to know whether they were killed, and to at least have their remains; for her sisters and for herself this would bring much rest. However, they "hope to see them again."

d) Yur Mary Herrera Contreras, sister of Hugo Fernando Martínez Contreras and Diego Armando Martínez Contreras and stepdaughter of Gustavo Caicedo Rodríguez

Her stepfather, Gustavo Caicedo Contreras, "[s]upported [them] in many ways, gave [them] much advice[, was] a very good stepfather, did not mistreat [them], he was very nice[. She] will always be very grateful to him." Furthermore, when she went to Bogotá her stepfather continued supporting her financially, even when her first spouse died and left her alone with two children. When her sister told her that her stepfather and her two brothers had been killed, she could not believe it and she was out of touch for three years, because "she was afraid that something might happen to the family." After that period, her mother and her brothers came to Bogotá without her stepfather.
Uncertainty affected her family life, the care of her children and her relationship with her spouse, to the point that they separated, as they fought because she was constantly concerned about her mother. Her family has changed very much after the facts: her mother does not go out because she is afraid and she fears that she is being followed or that they are watching her; her brothers are no longer the same children they were before and now they are quieter and sadder; and she, although she tries not to worry about her children, suffers insomnia and refuses to believe that her brothers are dead; sometimes she sees children on the street who look like them and she wonders whether they are alive, as she "refuse[s] to believe that they are dead." The "grief that [she] feel[s] is unexplainable, like a piece of life that one is suddenly losing."

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After what happened, the financial situation became more difficult and they did not have enough money to pay the rent. Some of her surviving brothers and her mother had to go live in a tin house, they went hungry and were cold, and she tried to help financially but sometimes she did not have enough even for herself and her children. Her mother always had food before the massacre; for this reason, it is very harsh and cruel not to have anything. They did not receive much financial support from the Red de Solidaridad, only twice that they helped pay the rent.
Her mother has a heart and stomach condition and began to suffer a thrombosis; these illnesses are closely linked to what happened to her. Also, she did not receive medical care because she did not have the displaced persons identification card.
The State is responsible for what happened because they abandoned the region; therefore, it must answer for that, provide financial support and reparation to her mother and to her for "the moral and financial instability that it caused them to suffer." Justice for her would be for those who did that to have to pay, for the State to answer for the mistakes and to acknowledge them publicly. "Instead of justice [for] the paramilitary they are giving them cover and not helping the victims, this makes one angry and powerless." It is important to know the truth and to know why they did that and how it benefited them. She requested that "if the paramilitary […] have [her brothers] as recruits, that they set them free, allow them to go home, and if they are dead then those responsible should pay for that."

e) Zuli Herrera Contreras, sister of Hugo Fernando Martínez Contreras and of Diego Armando Martínez Contreras and stepdaughter of Gustavo Caicedo Rodríguez

The farm in Mapiripán was comfortable, spacious, well equipped, and there were animals. Her spouse and her stepfather worked and farmed the land and felled trees. There was always food. She always had a very good relationship with her stepfather and with her brothers.
Before the massacre she went to Bogotá to have her third child and when she heard of the massacre she was unable to communicate with her family. Their relatives told her that her family was dead and that she could not go there because it was dangerous. She felt "very desperate knowing that." When she talked to her mother and told her what happened "it was very painful."
When she met with the rest of her family she found her mother "distraught[, as] in one moment she lost everything [that she had], the smaller children cried for their father, for their brothers, and asked about them all the time." Her mother was left in very poor shape and ill; she is always in a bad mood and sad. Her siblings "were hit very hard," because although they were very small they remember everything and cannot forget.
Her life changed very much, because when she returned to the countryside she had to live separate from her spouse and from her mother and send her children to a boarding school. After the massacre, she worked as a cook on a farm, but sometimes she had to ask for cassava or plantain to avoid hunger. When she returned to Bogotá she took steps to register as part of the displaced population and she often went hungry; they received support from the Red de Solidaridad and from the Red Cross, although it was over a year before they helped them to pay the rent. They lived in a tin and plastic hut, neither she nor her spouse had jobs, and "it was very hard when their children [asked them] for food and they had nothing to give them."
She lives in fear that those things may happen again, she does not know whom to trust, and she cannot trust the police or the army. Furthermore, "the authorities have not investigated what happened to [her] brothers and [her] stepfather."

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It is very important for those responsible to be punished and for there to be justice so that this never again happens. The State cannot compensate all the damage caused and it is the State's fault that they have been displaced. She wants Colombia to acknowledge its responsibility and to help the people in the countryside, whom they think are paramilitary or guerrilla fighters, with roads, schools, and public health. She would like the Inter-American Court "to clearly show how things are [and] to make it known that if people collaborate with the guerrilla forces it is because […] they threaten [to] kill one of their sons."

f) Gustavo Caicedo Contreras, brother of Hugo Fernando Martínez Contreras and of Diego Armando Martínez Contreras and son of Gustavo Caicedo Rodríguez

He is 15 years old and has many memories of his life with his family in Mapiripán, when they went to a lot of places with their father and he played with his brothers. The day his father and his brothers were taken away he was ill and his mother began crying. That day his sister, his mother and he himself cried a lot and they wanted to go looking for his father and brothers, but other people told them not to go looking for them because they would be killed. "They didn't care whether they were children or babies, they took them away for the mere fact of asking about the relative whom they had taken." Afterwards the family went to Anzuelo, to Bogotá –where they went hungry and were cold- and to Rincón de la India, where they stayed. When the guerrilla forces, the paramilitary and the army arrived again in Mapiripán in 2002 he was very scared "because he was studying at a boarding school. […] It was very unsafe, there were bombs, combat."
He misses his brothers and does not think he will see them again. He cries when he thinks about them. He feels angry about what happened. He cannot concentrate on studying, because he thinks about his mother who is alone, with no one to keep her company. He fails tests thinking about these things or about something happening to his mother. He feels afraid "because sometimes people say that the paramilitary are coming. The government thinks that […] those who live here are guerrilla fighters." He has felt rejected for being a displaced person, "because in Bogotá people looked at [him] in a strange way for being a displaced person." Now he feels bad because where he lives he "ha[s] no one."
He thinks that they would be better off with their father and nothing would be lacking, while now he does not know how they are going to manage for the books and living expenses.
He wants to recover everything they had on the farm and for them to help him "with school, to continue studying."

g) Maryuri Caicedo Contreras, sister of Hugo Fernando Martínez Contreras and of Diego Armando Martínez Contreras and daughter of Gustavo Caicedo Rodríguez

She is 14 years old. Her father was "a very good person" and took care of her very much. The family went out and they had a good time. She felt protected by her father and by her brothers; her mother took care of them because she did not have to work. The day that her father and her brothers were taken away, the witness, together with three of her brothers and the parents, was going from the farm to the town to get health care for her brother Gustavo. When they turned around, they had already taken them. She saw people crying and telling them not to go looking for them because they would be killed. However, they "looked for them everywhere and could not find them." She saw "people thrown into the river[, and] some people only the body, as they

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had no hands, […] no heads." Her mother and sister cried a lot and [she] was very much afraid that they would kill them. When she remembers all this she wants to cry.
Their father gave them everything they needed and paid for their schooling. When they left Mapiripán they lost everything, they went hungry, and for two years she could not study. Then they lived in a tin hut in Bogotá, where she became ill due to the cold, and even though the doctors gave her medicine, it did not help. She feels very strong headaches and cannot see well. She also had appendicitis and menstrual problems; the doctor said they were symptoms of thrombosis. She has had and continues to have problems studying and understanding what the professors say to her, because she is thinking about her father and brothers. The professors at the school in Bogotá frowned on her for not wearing a uniform, but they had no money to buy it. Before they left Mapiripán they had many things and now they have nothing.
She continues to think a lot about her father and brothers. She misses her brothers very much. She cries a lot, sometimes does not sleep well, and has nightmares in which she remembers how they killed the people in Mapiripán. Her father was going to give her a party for her fifteenth birthday and had promised to buy her a motorcycle; she will not get the promised gift. She would like to have the same comfortable situation they had before, and it is important for her that those responsible be punished.

h) Nadia Mariana Valencia Sanmiguel, daughter of José Rolan Valencia

Her father was an employee at the mayor's office and he worked as a dispatcher at the airport. She described the arrival of the paramilitary in her town, how the place changed completely, and the comments she heard about how they were killing people.
The day her father was taken from their house "[a]ll [her] brothers and sisters were outside crying and [her] mother was also crying with her sick child." When they captured him, the father begged the paramilitary not to kill him because he had five children, one of them ill, and his spouse. Her younger sister, Yinda, cried all the time. The following day, the inspector and the mayor came to inform them that the paramilitary had killed her father and that his body was at the airport. Her sister Yinda held on to her father's photograph and her mother implored. They never saw their father dead, but people told them that "they beheaded him, they played soccer with the head […], and his head was ten meters away from the body. […] They were not allowed to recover the bodies, whoever went to recover them […] was shot by the paramilitary. […] The inspector issued a permit for [her] mother to recover [her] father[, whom] they wrapped in a sheet and buried in a grave in the cemetery, where they placed the head with the body. [She] only saw [her] father's leg when they took him by in a pick-up truck." She never saw her father's grave, and the day he was buried her sister was very sad and afflicted.
When she heard that her father had been killed she cried a lot, and felt very angry, as well as much grief, and she did not know what would become of [her mother, her siblings and herself] without him, as they were very small. Afterwards, she and her family went to Villavicencio and lived at the house of some friends of her father for a month; they received food and support from the social program of the Church and from friends, nothing from the government. At that time they were unable to study. Her mother had to work in other people's homes. Her father provided them with food and everything. After his death they have had to suffer much deprivation, as her mother could barely get food for them.
She had to go to a boarding school to be able to study again, although she wanted to stay with her mother. She missed her family very much and for two years she did not want to study

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because “psychologically [she] was not well, could not sleep well, [had] nightmares […] with people chasing [her] father and [her] brothers. [She] became aggressive. [S]he thought that everyone was her enemy.” Her life changed very much after her father died, as she had always lived in a town with her two parents and her current life is not like that. She would like to visit Mapiripán, but would not stay because it brings her bad memories.
She had never testified before and she feels afraid now that she is testifying here, as she is always mistrustful. Justice, for her, would be for all those involved in what happened to her father to pay for the harm they did to them.

i) Roland Andrés Valencia Sanmiguel, son of José Rolan Valencia

He is eleven years old and was born in Mapiripán. He does not remember well what his father was like, but he knows that he is dead. He misses having a father. Before, he lived with his father, mother and brothers and sisters, and now he lives in a small house in Villavicencio. His sister takes care of him while his mother works. He wants to be a policeman “because the police help [other] people.”

j) Yinda Adriana Valencia Sanmiguel, daughter of José Rolan Valencia

When she was 9 years old, in 1997, in Mapiripán “people lived well, in peace”. When they were in Mapiripán she, her mother and her brothers and sisters had everything they needed, food, shelter, clothing. Her father worked as a dispatcher at the landing strip during the day, and for some time he owned a movie house.
She narrated the facts that happened when the paramilitary arrived at her house, threw her father on the ground and tied his hands behind his back. She felt very bad knowing that he would never come back, because none of those they had taken away ever returned. At that time her mother prayed a lot and her brothers were crying and distraught. The following day she saw her father’s feet when they were transporting him to the cemetery, she felt bad and cried a lot. The day of the burial she and her family left their house forever and spent the night in the town clinic, fearful that they might kill them. She knows that her father died decapitated. Afterwards she spent four years at a boarding school that did not charge them, other children talked about the massacre and said that it had been carried out by the military, that they had killed many people and had thrown the bodies into the river.
Her life changed very much after the facts. When they left the town, they went to the house of some friends of her father, who gave them food and a place to sleep. Her younger siblings were left alone because her mother had to work at various jobs, in family houses and restaurants. She herself had to work at a supermarket and at family houses to pay for what was needed to study and to help her family. However, they often went hungry, and when they wanted something they could not have it.
She misses her father very much, thinks a lot about him and about how they enjoyed themselves, because her relationship with him was “very close and special.” She visits her mother every month. Justice for her would be for those responsible of the massacre to be found and for the State to help her with her schooling.

k) Johanna Marina Valencia Sanmiguel, daughter of José Rolan Valencia

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She is 16 years old and she described how the facts of July 1997 took place. She saw how they took her father away. Her sister Yinda cried and begged them not to take him away. The witness, her mother and siblings also cried. “I thought that if they took him away they were going to kill him, because a great number of people had already been killed.” The day after they took her father they learned that he was dead and that he had been decapitated. That same day she, her mother and her siblings had to go somewhere else and they stayed at a clinic out of fear that they might kill them too.
After the massacre they suffered a lot and life became more difficult. They went to Villavicencio and lived with some friends of her father. Afterwards, they “went hungry and [their] mother had to work to buy food. [She] had to take care of [her] brothers and sisters since she was eight. [She has] a brother with special needs and had to feed him from a bottle and clean him up. [She] also had to cook[. S]ometimes [she] had to ask the neighbors for food.”
Her life would be much better if her father were alive. Although she knows that it is not possible, she wants them to return her father. It is important for those responsible to be punished.

l) Carmen Johanna Jaramillo Giraldo, stepdaughter of Sinaí Blanco Santamaría

When she arrived in Mapiripán to live she came to love her stepfather very much; he began to pay for her schooling and he was “a very open-minded person.”
Before the paramilitary came, the security situation was all right. She described the terror felt by the townspeople when the paramilitary arrived, and people heard that they came with a list. She met some of the paramilitary and saw many of them, including the “Mochacabezas”, who killed people. There were rumors about people who had been dismembered and thrown into the river in bits and pieces. “Since they arrived, it was like a ghost town[. E]very little while you heard that they took people away[. T]he paramilitary were heartless [and] they felt no pity for people’s grief.” There were many dead and missing in Mapiripán, including a whole family missing, with a baby that was a few months old.
The day after the paramilitary took her stepfather away, she –who was 16 years old at the time- and her mother went looking for him and found his body at the police station. “When [she] approached […] [she] recognized that he was [her] father. [She sat] next to him and no longer understood anything, [she] almost went mad, they were going to cover him and [she] said[: D’ont] cover him, he is going to wake up. [She squatted] next to him and lifted his head onto [her] legs, and his throat had been slit. [Her] father’s face had been cut, he had been tied with black nylon[. She said: W]hy did they tie him up if he was not bad? [She stayed] with him crying for three hours until they took [her] away from there.”
Aside from her stepfather’s body she saw other corpses and a woman dragging her spouse’s body with the head in her other hand to put them together. This made her feel angry and powerless because she could not do anything about it. Her mother called the mayor and the police inspector to remove the body but they said that they could not. “The paramilitary said that when they killed someone that person remained there. [Her] father was the only person they took away from the town [because] his family in San Martín sent a small plane to remove his body. [They] buried him in San Martín.”
They left for Villavicencio, and there she could not sleep, but her boyfriend helped her overcome that “because otherwise [she] would have died.” Afterwards she and her mother went to Acacias, because they were told that they were looking for them to kill them. When she returned to Mapiripán a year later it was very difficult for her to go by the placed where her stepfather was

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killed. Then she went to Villavicencio to have her son and she has not returned to Mapiripán, out of fear. Sometimes she is so sad she cannot sleep. She wants to change her surname for that of her stepfather, but they have not allowed her to do so.
Her life after the massacre changed very much and she had to quit school. She and her siblings received everything they needed from her stepfather. Her stepfather had offered to pay for her college education; therefore, she would have been a professional, and she wanted to study languages and travel. Instead, she and her mother have gone hungry and had to sell things on the street. Her mother sewed to make some money. Her mother almost died, because she did not eat well, and she also suffered a pre-heart attack.
It is important for those responsible to be punished and to pay for what they did. The State is responsible for what happened in Mapiripán.

m) Luis Guillermo Pérez, human rights attorney

He became the lawyer for the civil party in the criminal proceeding on the Mapiripán Massacre, assigned to the Human Rights Unit of the Office of the Attorney General. In this regard, he filed complaints regarding irregularities in connection with the links between the paramilitary and the army, as well as regarding impunity in military criminal justice. He also filed complaints due to which he had to testify before the Public Prosecutor's Office, as the person possibly responsible for the alleged threats suffered by members of the army who were imprisoned due to the facts. Furthermore, the constitutional remedy that he filed made the proceeding go back to regular criminal justice. On the other hand, he began to be persecuted. There were rumors that there was already an order to murder him, and his work as a human rights advocate was infiltrated. When he received information that preparations for his murder were already underway, he left Colombia, where he has only returned for a few days, but he has had to establish permanent residence abroad.

n) Expert opinion of Ana Deutsch, a psychologist

The expert witness stated that the next of kin of the alleged victims have suffered pecuniary and non-pecuniary damages as a direct consequence of the disappearance and execution of the victims, of lack of support by State authorities to immediately search for the missing persons, due to their fear of beginning or continuing the search for their next of kin, since they suffered threats or attacks, and because of the threats and attacks against those who continued searching for the alleged victims. All the above has affected the physical and psychological health of said next of kin, and has affected their social and work relations, has altered their family dynamics, and in some cases has endangered the lives and the right to humane treatment of some of their members.

ñ) Expert opinion of Robin Kirk, a human rights professional

The expert witness stated that in Colombia there are relations between the armed forces and the paramilitary groups, and these relations continue to date. Between 1997 and 1999 the State conducted an investigation that showed how army officers worked with the paramilitary, shared intelligence, planned and carried out joint operations, supplied weapons and munitions, as well as helicopter support and medical assistance.

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Kirk stated that the paramilitary have established a clear pattern of operation: they spread rumors of an imminent attack, paint graffiti and distribute written threats. Then, heavily armed men arrive at the place and take people out of their houses to murder them. The security forces rarely intervene even if they are previously warned of the attacks. This pattern was followed in Mapiripán in 1997.

When the Mapiripán Massacre took place, the Seventh Brigade based in Villavicencio was one of those that most actively supported the paramilitary groups. It was also headed by high ranking officers who were considered to be among the most capable and intelligent in the Colombian armed forces.

The expert stated that the Mapiripán Massacre was planned in January 1997 and that the paramilitary chose that town because it was a cocaine trade center and, therefore, a source of income for the guerillas, who took advantage of the trade by taxing sales.

According to the expert there are military officers who have not been brought before the judiciary, including Colonel Carlos Ávila, commander of the Joaquín Paris Battalion, General Rito Alejo del Río, Commander of the Seventeenth Brigade and General Agustín Ardila, Commander of the Fourth Division at the time of the facts.

The expert stated that the head of the Public Prosecutors' Office requested that a formal investigation be opened against Colonel Ávila, on the basis that he probably helped coordinate the arrival of the paramilitary in Mapiripán. Nevertheless, he was promoted to the rank of general and in 2003 he was appointed as commander of the Seventh Brigade in Villavicencio, the same brigade that was involved Mapiripán.

The mechanism that maintains impunity in Colombia includes protracted and justified delays that last up to seven years or more. Also, the proceedings that have to do with crimes against humanity are not conducted independently and impartially. In all the cases, the responsibilities are clear and the authorities know precisely and in detail who ordered the crimes, how much they cost, who planned and executed them, how and when they were carried out, and who benefited from them. Despite all this, none of those cases has led to a credible trial, investigation and sentencing. Finally, there is a great shortcoming with regard to protection of the physical and psychological safety, as well as the dignity, the identity and the privacy of the victims, the witnesses, and the investigators, which denies them the right to justice.

B) TESTIMONY AND EXPERT OPINIONS

76. At the public hearing (supra paras. 35 and 36), the Court heard the statements of the witnesses and the expert witness offered by the Commission, the representatives and the State. The Court will now summarize those statements.

a) Gustavo Morales Marín, Public Prosecutor before the Supreme Court of Justice of Colombia

He stated that the Attorney General's Office of Colombia has taken a number of steps to impede impunity and cases of grave human rights violations, "technically selecting the Public Prosecutors […], training said officials […], establishing a number of administrative controls regarding the functions of the Public Prosecutors and, finally, develop[ing] a policy for change in the criminal procedural court system."

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In the instant case a number of steps have been taken "in a proceeding that has gone on for several years but which has bifurcated, because in [the] system there is a phenomenon called division of the procedural unity […].
The Public Prosecutor's Office wishes to discover each and every perpetrator, but […] this is a task that sometimes goes beyond man's function, due to multiple social or economic circumstances." To be able to assess the reasonability of the duration of the proceeding, "the starting point must be the complexity of the fact, [as well as the] place, time, and way that it happened." Other resources are also required, because access to Mapiripán is difficult.
The witness is familiar with the special steps taken in this specific case to combat impunity; these are "selection of the Public Prosecutors […], the search for international resources to be able to conduct certain extremely technical tests, scientific in nature, in the river-bed […] and constant administrative –not judicial- oversight by the Attorney General".
Given the number of massacres, the number of victims and of events such as that in the case of Mapiripán, where victims' bodies are destroyed, the type of resources used by the Public Prosecutor's Office are "DNA analyses and [collaboration by] the National Institute of Forensic Medicine and Science [Instituto Nacional de Medicina Legal y Ciencias Forenses][…]." However, "it is another matter to be able to collect the sign, the vestige, the indication that will enable the analysis."
On the other hand, Mr. Morales Marín stated that the Public Prosecutor's Office had chosen the Mapiripán case as one of the cases to be investigated for human rights violations.

b) Luz Mery Pinzón López, spouse of Jaime Riaño Colorado and sister of Enrique, Jorge, Luis Eduardo, and José Alberto Pinzón López

In July 1997 she lived in the village of La Cristalina with her common-law spouse, her brothers Enrique, Jorge, Luis Eduardo, and José Alberto Pinzón López, with her daughter Esperanza Pinzón and with her mother. She worked in La Cristalina with Marco Tulio Bustos.
After the massacre she left La Cristalina to seek refuge. She went by the Cooperative, where she saw arms and legs on the ground. She spent a night in Mapiripán before going to Villavicencio with her mother, her sister, her daughter, and her small children, because she was afraid that "they might also take [her] away[and] make her disappear like they took [her] spouse [and] brothers away."
She and her brothers supported her mother. Her brothers also supported their sisters while they studied. After they disappeared "it was terrible […]; it was no longer the same, there was no longer any schooling, there was nothing, it all ended. [They] went hungry, unclothed, were […] destitute."
Jaime Riaño Colorado, her common-law spouse for seven years, was a very good man and they always had a good time. She was "terribly" affected by his disappearance, because she had no one to help her and her children. If he were alive, she and her children would be better off, lacking nothing.
Her mother was severely affected by the facts and she died "from seeing that [her] brothers [and also her] spouse disappeared." It was also terrible for her children to see their uncles and Jaime Riaño Colorado taken away. Sometimes her mother blamed her for having taken her brothers to work at La Cristalina.
She was forcibly displaced. What she had before the massacre –the farms and the animals- "was lost or ceased to exist." However, the Red de Solidaridad and the Instituto Nacional de Vivienda

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de Interés Social y Reforma Urbana (INURBE) gave her a house in her name and that of her children. After the massacre, the same people who took her spouse and her brothers away threatened her in Acacías.
She has not seen the State do anything to establish the whereabouts of her brothers and of her spouse. She did not file a complaint about what happened because she "was frightened" and she lives in a state of nervousness about something happening to her. She feels afraid upon rendering this statement because she "does not know what it will be like when she returns to Colombia."
She would like to see the body of her brothers and spouse. However, she would like to see them alive and she "always hopes [that] they will return." Sometimes she also thinks that they are dead.
She would like those responsible to be punished, as it "hurts very much for them to do those things without one knowing why." She would like to receive financial support for her children's schooling and to recover what they had before.

c) Mariela Contreras Cruz, the mother of Diego Armando and Hugo Fernando Martínez Contreras and the spouse of Gustavo Caicedo Contreras

She lived an hour and a half from Mapiripán with her spouse and their 7 children. Her house was wooden; she had electrical appliances, cattle, hens, pigs, and goats.
When they were in Mapiripán their children escaped and told them that they had seen body parts. When they left Mapiripán they walked "from farm to farm" for a month until they arrived at El Anzuelo. They had no comforts and the "children lost time from studying." Afterwards they had to leave that place because the paramilitary attacked the town and threatened them. Since she "was traumatized by what had happened," she went to Villavicencio with her children, but since the State did not give them much support, she went to Bogotá, where they helped her with "groceries" five months later.
In Bogotá she stayed for some time at the house of her daughter, who had problems with her spouse because she was ill and he had to work to support them. She "even had to beg". Afterwards, the witness and her younger children moved into a "house closed in tin […] and plastic", which belonged to her brother. Her children cried from hunger, as she was unable to find employment. She has never gone to her house because she "think[s] that they may kill [her…] also, with [her] children."
Since she did not see her sons and spouse dead she "tell[s her]self that they are alive." However, she thinks that she will never see the corpses. She feels sad and lonely, as she has "nothing and [is] morally destroyed from missing [her] children and [her] spouse." Her other children are extremely traumatized and they cry a lot. She cannot sleep restfully and she dreams "terrible things" about her children and her spouse.
Since the disappearance of her spouse and her two children she has felt very ill. Two years later she contracted hepatitis and has cirrhosis. She also suffered malaria of the brain and has been in bed with no one to support her.
She has talked with close to twenty displaced persons from Mapiripán, who have told her that they lost next of kin during the facts. She told them about the instant case and they said that "there was no way they would say anything, because they knew that they were in danger and they told [her] […] that she should stop doing that because she had a noose around her neck." She feels "quite fearful" for having testified, especially when she returns to Colombia.

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She wants justice to be done "because there are many who are suffering." Justice is necessary "so that they no longer massacre the people. She asked "that they remember that their life is hanging by a thread [and that] they remember that […] they too are Colombia and they have a right to life. [She also requested] that [they] give them the opportunity to raise [their] children and move forward."

d) Nory Giraldo de Jaramillo, spouse of Sinaí Blanco Santamaría

On the day of the facts they took her spouse away during the night, and the following day she and her sister found the body beheaded and "with the arms tied behind the back with a cord." Afterwards they took the body away in a small airplane and buried it in San Martín.
She worked with her spouse in a business; they lived comfortably and everything they had belonged to them. However, "everything was lost when [she] left."
She was forced to leave Mapiripán, because when they killed her "spouse logically [she] had to leave that place." Her lived changed "completely [because] life as a displaced person is very harsh because [one] feels afraid of everything, there is no way to work, [one] has no way to earn [one's] sustenance, [one] even has to beg for charity from anyone who is willing to give."
The death of her spouse affected family life "very much, morally, financially, everything, in every way." She was never the same again, and each time that she remembers, "the grief is terrible." She feels "grief, despair, anger, for all the damage they have done to [her]." She fears for her children.
Justice, for the witness, "means well-being for [her] and [her] children and for those guilty to be punished."

e) Marina Sanmiguel Duarte, spouse of José Rolan Valencia

On the day of the facts her spouse was taken out of their house in front of her children and herself by a paramilitary group, who "tied his hands behind his back and took him from the house." The next day she found him "next to the road, the body on one side and his head on the other side."
She was forced to leave Mapiripán because she "thought that they would return, because they had said that they would return." As a displaced person she feels rejected by people and it is not easy to get work anywhere.
The death of her spouse, the father of her children, has affected "their academic performance and [their] mood […] is not the same[. Also,] they have had to grow up almost alone at home because [she] ha[s] been unable to be with them." She is afraid due to her testimony before the Court upon her "arrival at the place where [she] live[s], because there are a lot of those people and [she] do[es] not know what may happen."
She thinks the State can do "something for [her] children to continue studying and for [her] sick […] son to receive good treatment and to survive somewhat better, to have a better life." Justice, for her, means for "all those involved in this massacre to pay […] for all that they did, and for this never to happen again anywhere."

f) Viviana Barrera, daughter of Antonio María Barrera

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She lived in Villavicencio at the time of the facts and visited her father every three or four months. When she heard of what happened she went to Mapiripán, where they told her that her father had been killed. She asked to see the body but they told her that was not possible, because it "had been mangled."
Her father wanted the best for her and for the children; he bought them a house in Mapiripán – where she lives now- and "tried to give [them] everything they needed." Her father sent her the money for the rent of the house in Villavicencio and he supported the witness and the five children, including their education.
After the facts her life changed very much; she had to work and move to a "less costly and humble" house. Since then, she has lacked many things financially. She also lacks moral support and feels "an immense void and a very great sadness."
Living currently in Mapiripán makes her "very fearful because a year ago [she] had to take [her] older son away [to Medellín] because the paramilitary threatened him."
For her, justice is for "those who did this […] to somehow pay for it […] whoever they are [for] this to never happen again and for there not to be impunity […] for so many things." She also asked that they "do something truly productive for [Mapiripán]".

g) Expert opinion of Federico Andreu Guzmán, a human rights specialist

Based on domestic legislation, on internal documents and orders of the Military Forces, on judicial and disciplinary investigations, on reports and rulings by international bodies, the expert witness described the historical development of the operational link between the paramilitary and the army. In this regard he stated that, "[t]hroughout the 1990s, the paramilitary project, as a strategy for control over territory and population, one that is permanent and complementary to the counterinsurgency policy of the Military Forces, was asserted all around Colombia. Actions by the paramilitary have no doubt been profitable, both militarily and politically, for the Military Forces: attaining maximum violence at a low political cost for the armed institution."
He also asserted that "[i]mpunity of human rights violations has been a constant aspect of government actions throughout these decades." Among the mechanisms and practices that have enabled impunity, the expert witness highlighted not carrying out arrest warrants, threats and attacks against the Judiciary and the investigative bodies, granting the military forces authority as judicial police, ambiguous government action against the paramilitary, lack of a policy of cleansing and depuration of the Military Forces, and the existence of legal mechanisms to allow impunity such as Decree 128 of 2003.
Andreu also stated that, "in the course of 20 years, [he] ha[s] reached the conclusion that in all these areas where the paramilitary are present, which always coincide with areas where there is a high concentration of military forces, with highly sophisticated telecommunications systems, transportation, and so forth, [he] finds that is impossible to think that the paramilitary can move around without the complicity, the connivance, the logistic information and intelligence support by the military forces."
With regard to "the victims who have filed complaints [he stated that they] constantly suffer harassment, [and that there] have been cases not only of harassment, but also […] that have ended in death. If one looks at most of the cases that have been brought before an international body, where there has been more pressure on the national authorities, one finds that in most cases, the next of kin have had to be taken abroad […]". Furthermore, this harassment has "a very perverse effect, […] it establishes the terror syndrome, and since the cost of obtaining true

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justice and reparation is so high for the victims themselves, many victims do not file complaints. […] In face of this situation [it is] difficult for some investigators who truly want justice to be done and to elucidate the facts." Since 1989 the maltreatment of victims has been greater, there have been cases of beheading, mutilation, incinerations, and so forth. This phenomenon has two objectives: to heighten terror in small communities and to make evidence disappear to avoid investigation by the Public Prosecutor's Office.
The expert witness suggested a review of military doctrine and of the armed forces, as well as a policy of cleansing and depuration of said forces, and a redefinition of their makeup. He also suggested taking large-scale measures to strengthen the Judiciary.

C) ASSESSMENT OF THE EVIDENCE

Assessment of the Documentary Evidence

77. In this case, as in others, [FN10] the Court accepts the evidentiary value of documents submitted by the parties at the appropriate procedural moment that were neither disputed nor challenged and whose authenticity was not questioned.

[FN10] See Case of Acosta Calderón, supra note 7, para. 45; Case of Yatama, supra note 7, para. 112, and Case of Fermín Ramírez, supra note 7, para. 48.
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78. With regard to the documents requested by this Court based on Article 45 of the Rules of Procedure and that were submitted by the parties (supra paras. 28 and 45), the Court includes them in the body of evidence of the instant case, applying the provisions set forth in the first paragraph of those rules. Also applying said article of the Rules of Procedure, the Court includes as evidence the documents submitted by the Commission and by the State after filing of the application and the reply to the application, respectively, and most of the appendixes submitted by the representatives and the State together with the final pleadings, as it deems them useful for the instant case.

79. As regards the press documents submitted by the representatives, as well as other articles and news reports published by the press, the Court deems that even though they are not documentary evidence proper, they will be considered when they reflect publicly known or notorious facts or statements of officials of the State, or when they corroborate what has been established in other documents or testimony received during the proceeding. [FN11]

[FN11] See Case of Yatama, supra note 7, para. 119; Case of Fermín Ramírez, supra note 7,para. 51, and Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 43.
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80. The State objected to the statements rendered before a notary public (affidavits) by Sara Paola Pinzón López, Yur Mary Herrera Contreras, Zuli Herrera Contraras, Nadia Mariana

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Valencia Sanmiguel, Carmen Johanna Jaramillo Giraldo, Esther Pinzón López, and María Teresa Pinzón López, as well as the sworn statement by Luis Guillermo Pérez (supra paras. 29 and 32), on the basis that "they [are no longer in accordance with the object, as they] refer to facts pertaining to the rights to life, to humane treatment, and to liberty, and the State has acknowledged its responsibility regarding the violation of said rights." Colombia also referred to certain alleged inconsistencies in the testimony of María Teresa Pinzón López, Sara Paola Pinzón López, Esther Pinzón López, Zuly Herrera Contreras, and Luis Guillermo Pérez.

81. With regard to the statements rendered as testimony before a notary public (affidavits), the Court accepts them insofar as they are in accordance with the object defined in the January 28, 2005 Order (supra para. 25), taking into account the comments made by the State (supra para. 32) and its acknowledgment of international responsibility (supra para. 34). Also, since the next of kin of the alleged victims have a direct interest in the case, their statements cannot be assessed in an isolated manner, but rather within the context of the body of evidence, applying the rules of competent analysis. [FN12]

[FN12] See Case of Yatama, supra note 7, para. 122; Case of Fermín Ramírez, supra note 7,para. 49, and Case of the Indigenous Community Yakye. Judgment of June 17, 2005. Series C No. 125, para. 43.

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82. The State objected to the sworn statement of witness Luis Guillermo Pérez because it was only authenticated by a notary public, and it therefore deemed that it "does not fulfill [the] important formality [of being rendered before a notary public (affidavit) and also because the witness] has no direct knowledge of the facts addressed in the proceeding and because he was a representative of the civil party in the domestic proceedings." In this regard, the Court has accepted, in previous cases, sworn statements that were not rendered before a notary public, when this does not affect legal certainty and procedural balance among the parties. [FN13] The Court also deems that this testimony can help it establish the facts of the instant case, insofar as it is in accordance with the object defined in the aforementioned Order, and will assess it in the context of the body of evidence, applying the rules of competent analysis and taking into account the comments made by the State (supra para. 32).

[FN13] See Case of Yatama, supra note 7, para. 115; Case of the Serrano Cruz Sisters, supra note 11, para. 39, and Case of Lori Berenson Mejía. Judgment of November 25, 2004. Series C No. 119, para. 82.

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83. The State also challenged the statements rendered before the respective legal representatives and with authentication of signatures by a notary public, signed by minors Roland Andrés Valencia Sanmiguel, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Yinda Adriana Valencia Sanmiguel, and Johanna Marina Valencia Sanmiguel "because they were not obtained in accordance with the Colombian legislation in force[, as] it is not true that according to Colombian law minors cannot render statements." In this regard, the Court has

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admitted, in previous cases, sworn statements that were not rendered before a notary public, when this does not affect legal certainty and procedural balance among the parties [FN14]. Therefore, the Court admits them insofar as they are in accordance with the object defined in said Order and taking into account the comments made by the State and the acknowledgment of responsibility by the State (supra paras. 25 and 34). As this Court has already pointed out (supra para. 81), the next of kin of the alleged victims have a direct interest in the case, and their statement cannot be assessed in an isolated manner, but rather in the context of the body of evidence, applying the rules of competent analysis.

[FN14] See Case of Yatama, supra note 7, para. 115; Case of the Serrano Cruz Sisters, supra note 11, para. 39, and Case of Lori Berenson Mejía, supra note 13,, para. 82.

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84. The sworn statements of expert witnesses Ana Deustch and Robin Kirk, offered by the representatives (supra para. 25), were not rendered before a notary public but rather authenticated by a public notary. Furthermore, the State challenged the sworn statement of expert witness Robin Kirk, because the representatives submitted "the original version and its translation into Spanish" inopportunely. Colombia also challenged the sworn statement of expert witness Ana Deutsch, because "the facts on which she […] bases her expert opinion are not appropriate inputs for a psychiatric, psychological and psychosocial expert opinion entrusted to her[; the expert opinion] was not carried out in strict compliance with the objectivity and impartiality required by the nature of an expert opinion[;] the depth of the personal and family assessment does not address the psychological structure of the individuals nor does it extensively analyze the history of the family dynamics of the persons assessed[; and] there are significant gaps regarding the techniques and instruments used in the assessment."

85. In this regard, the Court admits the expert opinions mentioned in the previous paragraph, as it has accepted, in other cases, sworn statements that were not rendered before a notary public when this does not affect legal certainty and procedural balance among the parties, [FN15] insofar as they are in accordance with the object defined in said Order (supra para. 25). This court will assess them in the context of the body of evidence, applying the rules of competent analysis and taking into account the objections of the State.

[FN15] See Case of Yatama, supra note 7, para. 115; Case of the Serrano Cruz Sisters, supra note 11, para. 39, and Case of Lori Berenson Mejía, supra note 13, para. 82.

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86. Colombia challenged the authenticity of the private document regarding the bargain and sale on February 10, 1992, between Marco Tulio Bustos Ortiz and Luz Mery Pinzón López, because it mentions "the Mapiripán Massacre that took place in 1997." Since it is absolutely impossible to refer to events that happened in 1997 in a document signed in 1992, the Court does not accept said document as evidence in the instant case.

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87. The State challenged the evidence submitted at the public hearing by the representatives "because it was not supervening." It also challenged all the evidence submitted after the appropriate procedural moment and not known "previously by the State […] because it violates its right of rebuttal". In this regard, the Court accepts said evidence because it is useful for its ruling in the instant case, taking into account the comments made by the State and based on Article 45(1) of the Rules of Procedure. [FN16]

[FN16] See Case of Lori Berenson Mejía, supra note 13, para. 81; Case of Tibi. Judgment of September 7, 2004. Series C No. 114, paras. 78 and 85, and Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 90.

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88. This Court also notes that the State also submitted documentary evidence after its reply to the application. Specifically, as an appendix to its brief with final pleadings, Colombia submitted a "legal expert opinion" prepared by James Crawford. Said document states that "[g]iven the lack of specific details on the case, the […] discussion is necessarily general in nature. The Court will address the facts in detail based on the evidence submitted by the parties."; in other words, the text does not address the facts of the case.

89. The Court deems the documents forwarded by the State in its final written pleadings to be useful (supra para. 40) –except for the document submitted by James Crawford for the reasons given in the previous paragraph-, which were neither disputed nor challenged, and whose authenticity or veracity was not questioned, for which reason this Court includes them in the body of evidence, in accordance with Article 45(1) of the Rules of Procedure.

90. Also applying the provisions set forth in Article 45(1) of the Rules of Procedure, the Court includes the following evidence tendered in the Case of the 19 Tradesmen in the body of evidence of the instant case because it is useful to decide on the instant case: Law 48 of December 16, 1968, legislative Decree 3398 of December 24, 1965, as well as Decrees 0180 of January 27, 1988, 0815 of April 19, 1989, 1194 of June 8, 1989 and 2266 of October 4, 1991; the March 17, 1998 judgment issued by the High Military Court, the May 25, 1989 judgment issued by the Supreme Court of Justice, the April 14, 1998 judgment issued by the Tribunal Nacional, the May 28, 1997 judgment issued by the Regional Court of Cúcuta, all of them in Colombia; and the report by the United Nations Special Rapporteur on summary or arbitrary executions regarding the visit to Colombia from October 11 to 20, 1989 (E/CN.4/1990/22/Add.1 of January 24, 1990). The Court also includes the following evidence in the body of evidence, due to its usefulness for a decision on the instant case: Decree 3030/90 of December 14, 1990; Decree 2535 issued on December 17, 1993; Decree 356/94 issued on February 11, 1994; Law 418 of December 26, 1997; Law 548 of December 23, 1999; Law 782 of December 23, 2002; Decree No. 324 issued on February 25, 2000; Decree 3360 issued on November 24, 2003; Decree No. 2767 issued on August 31, 2004; Decree 250 issued on February 7, 2005; Law 387 of July 18, 1997; Decree 85 of 1989; Law 200 of 1995; Reports by the United Nations High Commissioner on Human Rights regarding the human rights situation in Colombia in 1998, 2000, 2004 and 2005; Economic and Social Council, Report by the Special Rapporteur on adequate housing as a component of the right to adequate living conditions and on the right to non-discrimination in

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this regard, E/CN.4/2005/48, March 3, 2005; Report by the Inter-American Commission on Human Rights on the Process of Demobilization in Colombia issued on December 13, 2004, OAS/Ser.L/V/II.120 Doc. 60; Unified Record of Displaced Population, accrued number of individuals included due to displacement up to August 31, 2005; High Commissioner for Peace in Colombia, Dialogue and Negotiation, Grupos de Autodefensa, Informe Annual Report on Human Rights and International Humanitarian Law 2002 and Avances Periodo Presidencial 2003, issued by the National Defense Ministry of the Republic of Colombia; statistics of the Red de Solidaridad Social on internal displacement; and Programa Nacional de atención integral a la población desplazada por la violencia - CONPES – Consejería Presidencial para los Derechos Humanos, document 2804 of September 13, 1995, National Planning Department of the Ministry of the Interior.

91. With regard to the documents attributed to the State Department of the United States of America, appended to the application by the Commission, the Court finds that they do not fulfill minimum formal requirements for admissibility, as it is not possible to precisely establish their source, as well as the procedure by which they were obtained. These circumstances do not allow the Court to give said documents evidentiary value.

92. With regard to the documents requested and forwarded as evidence to facilitate adjudication (supra paras. 28, 30 and 45), the Court includes them in the body of evidence of the instant case, applying the provisions of paragraph two, Article 45 of the Rules of Procedure.

Assessment of the testimony and expert opinions

93. With regard to the statements rendered by the witnesses and the expert witness offered by the Commission, the representatives, and the State, the Court admits them insofar as they are in accordance with the object of the examination set forth by the President in the January 28, 2005 and February 18, 2005 Orders (supra paras. 25 and 30) and gives them evidentiary value.

94. In this regard, this Court deems that the testimony of Nory Giraldo de Jaramillo, Marina Sanmiguel Duarte, Viviana Barrera Cruz, Luz Mery Pinzón López, and Mariela Contreras Cruz (supra paras. 25 and 38) is useful in the instant case. [FN17] However, since they are next of kin of alleged victims and have a direct interest in this case, it will not be assessed in an isolated manner, but rather in the context of the body of evidence of the proceeding.

[FN17] See Case of Yatama, supra note 7, para. 122; Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 49, and Case of the Indigenous Community Yakye Axa, supra note 12, para. 43.

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95. The State challenged the statement rendered before the Inter-American Court on March 7, 2005 by expert witness Federico Andreu (supra paras. 38 and 43), deeming that his statement seemed to be a testimony rather than an expert opinion. In this regard, the Court deems that this expert opinion can help the Court establish the facts of the instant case, insofar as it is in accordance with the object defined in said January 28, 2005 Order, and will assess it in the

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context of the body of evidence, applying the rules of competent analysis and taking into account the comments made by the State.

VIII. PROVEN FACTS

96. Having examined the evidence in the file of the instant case, the statements by the parties, as well as the acknowledgment of international responsibility by the State, the Court finds the following facts proven:

The internal armed conflict in Colombia and the illegal paramilitary groups called "paramilitary"

96.1 Various guerrilla groups began to operate in Colombia since the 1960s, and due to their activities the State declared that there was a "disturbance of public order and established a state of siege in the territory of the country." In face of this situation, on December 24, 1965, the State issued Legislative Decree 3398 "which organized national defense," and was transitory, but became permanent legislation through Law 48 of 1968 (with the exception of Articles 30 and 34). Articles 25 and 33 of said Legislative Decree provided the legal basis for the establishment of the "self-defense groups." The Whereas section of said legislation stated that "subversive actions fostered by extremist groups to disturb public order demand coordinated efforts by all bodies of public authority and the Nation's leading forces" and, in this regard, the aforementioned Article 25 provided that "[a]ll Colombians, men and women, not included in the mandatory military draft, c[ould] be used by the Government in activities and work that contributes to reestablishment of normality." Paragraph 3 of Article 33, mentioned above, provided that "[t]he Ministry of National Defense, through authorized command structures, may authorize the private use of weapons whose use is restricted to the Armed Forces." The "self-defense groups" were legally established under said provisions, for which reason they had the support of State authorities. [FN18]

[FN18] See Legislative Decree 3398 of December 24, 1965; and Law 48 of December 16, 1968; judgment issued by the High Military Court on March 17, 1998; and report the United Nations Special Rapporteur on summary or arbitrary executions, regarding the visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990, and expert opinion of Federico Andreu rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.2 In the framework of the struggle against the guerrilla groups, the State fostered the creation of said "self-defense groups" among the civilian population, and their main aims were to assist the security forces in counterinsurgency operations and to defend themselves from the guerrilla groups. The State granted them permits to bear and possess weapons, as well as logistic support. [FN19]

[FN19] See judgment issued by the Tribunal Nacional on April 14, 1998; judgment issued by the High Military Court on March 17, 1998; judgment issued by the Regional Court in Cúcuta on

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May 28, 1997; report by the United Nations Special Rapporteur on summary or arbitrary executions regarding the visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990; and report by the Departamento Administrativo de Seguridad (DAS) on March 15, 1989, and expert opinion of Federico Andreu rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.3 During the 1980s, especially after 1985, it became obvious that many "self-defense groups" had changed their objectives and had become criminal groups, commonly called "paramilitary." They developed primarily near the middle course of the Magdalena River, and spread toward other regions of the country. [FN20]

[FN20] See Decree 0180 of January 27, 1988, which "complements certain provisions of the criminal code and issues other provisions for the reestablishment of public order;" Decree 0815 of April 19, 1989; Decree 1194 of June 8, 1989, which "established new types of crime pertaining to the activities of armed groups, commonly known as death squads, groups of hired assassins, or private justice," and judgment issued by the High Military Court on March 17, 1998, and report by the United Nations Special Rapporteur on summary or arbitrary executions regarding the visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990.

96.4 On January 27, 1988, Colombia issued Legislative Decree 0180 "which complemented certain provisions of the Criminal Code and issued other provisions for reestablishment of public order." This Decree defined as crimes, inter alia, membership in, fostering of and direction of groups of hired assassins, as well as manufacturing of or trafficking in weapons and munitions whose use was restricted to the Military Forces or the National Police. This Decree subsequently became permanent legislation by means of Decree 2266 of 1991. [FN21]

[FN21] See Decree 0180 of January 27, 1988, which "complements certain provisions of the criminal code and issues other provisions for the reestablishment of public order;" and Decree 2266 of October 4, 1991.

96.5 Decree 0815 was issued on April 19, 1989, suspending the enforcement of paragraph 3 of Article 33 of Legislative Decree 3398 of 1965 (supra para. 96(1)), which empowered the Ministry of National Defense to authorize private citizens to bear weapons whose use was restricted to the Armed Forces. The Whereas section of Decree 0815 stated that "interpretation of [Legislative Decree 3398 of 1965, adopted as permanent legislation by means of Law 48 of 1968] by certain sectors of public opinion has generated confusion regarding its scope and purpose, in the sense that it could be considered a legal authorization to organize armed groups of civilians who act disregarding the Constitution and the law." Subsequently in its May 25, 1989 ruling, the Supreme Court of Justice declared that said paragraph 3 of Article 33 of Legislative Decree 3398 of 1965 was "constitutionally unenforceable". [FN22]

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[FN22] See Decree 0815 of April 19, 1989; judgment issued by the Supreme Court of Justice on May 25, 1989, and expert opinion of Federico Andreu rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.6 On June 8, 1989 the State issued Decree 1194 "that adds to Legislative Decree 0180 de 1988, to punish new types of crime, because this is necessary for the reestablishment of public order." The Whereas section of this law stated that "the events that have been taking place in the country have shown that there is a new type of crime that consists of committing atrocious acts carried out by armed groups, mistakenly called 'paramilitary,' functioning as death squads, groups of hired assassins, self-defense groups or private justice groups, whose existence and actions gravely affect the country's social stability, and which must be repressed to attain the reestablishment of public order and peace." This decree defined the crimes of promoting, funding, organizing, directing, fostering and carrying out acts "that seek to attain the establishment or the entry of individuals into armed groups commonly called death squads, groups of hired assassins or private justice groups, mistakenly called paramilitary." It also defined the crimes of linkage with and membership in said groups, as well as that of providing instruction, training or equipment "to individuals regarding military tactics, techniques or procedures to carry out the criminal activities" of said armed groups. It also defined as an aggravating circumstance of the aforementioned conducts their being "committed by active or retired members of the Military Forces or of the National Police or of the State's security agencies." This decree subsequently became permanent legislation by means of Decree 2266 issued on October 4, 1991. [FN23]

[FN23] See Decree 1194 of June 8, 1989, "established new types of crimes pertaining to activities of armed groups, commonly called death squads, groups of hired assassins or private justice groups;" Decree 2266 of October 4, 1991, "By means of which certain provisions issued under the powers granted by the State of Siege" are adopted as permanent legislation," and expert opinion of Federico Andreu rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.7 On December 14, 1990 the State issued Decree 3030/90 "that established the requirements for the reduction of sentences due to confession of crimes committed up to September 15, 1990." [FN24]

[FN24] See Decree 3030/90 of December 14, 1990, "that established the requirements for reduction of sentences due to confession of crimes committed up to September 5, 1990."

96.8 Decree 2535 was issued on December 17, 1993, setting forth provisions on weapons, munitions, and explosives." According to its Article 1, "its aim is to set forth provisions and

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requirements for owning and bearing arms, munitions, explosives and their accessories […]; indicating the system of […] private surveillance and private security." Its Article 9 provides that "restricted-use weapons are war weapons or weapons whose use is exclusive of the security forces, which may exceptionally be authorized based on the discretionary powers of the competent authorities, for special personal defense." [FN25]

[FN25] See Decree 2535 issued on December 17, 1993 "that issues provisions regarding weapons, munitions, and explosives."

96.9 On February 11, 1994 the State issued Decree 356/94 "that issues the Statute on Private Surveillance and Security," the purpose of which, according to its Article 1, is "that of establishing the statute for providing private surveillance and security services." Its Article 39 foresees providing "restricted-use firearms" and acting "with techniques and procedures other than those established for private surveillance and security services." [FN26]

[FN26] See Decree 356/94 issued on February 11, 1994 "that issues the Statute on Private Surveillance and Security."

96.10 On December 26, 1997 the State issued Law 418 "that sets forth certain instruments to seek harmonious relations, effective justice and issues other provisions." The period for this law to be in force was extended by means of Law 548 of December 23, 1999 and Law 782 of December 23, 2002. [FN27]

[FN27] See Law 418 issued on December 26, 1997 "which embodied certain instruments to seek harmonious relations, effective justice, and issues other provisions;" Law 548 of December 23, 1999 "that extends the period during which Law 418 of December 26, 1997 is in force and issues other provisions," and Law 782 of December 23, 2002 "that extends the period during which Law 418 of 1997, extended and modified by Law 548 of 1999, is in force, and modifies some of its provisions."

96.11 Decree 324 was issued on February 25, 2000, "Establishing the Coordination Center for the struggle against the illegal self-defense groups and other groups that operate outside the Law." [FN28]

[FN28] See Decree 324 issued on February 25, 2000 "that creates the Center for coordination of the struggle against the illegal self-defense groups and other groups outside the Law."

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96.12 In August 2002 certain leaders of the Autodefensas Unidas of Colombia (hereinafter "the AUC") publicly announced their intention to negotiate the terms for demobilization of their forces. [FN29]

[FN29] See the February 17, 2004 Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2004/13, para. 13; High Commissioner for Peace in Colombia, Dialogue and Negotiation, Self-Defense Groups, at http://www.altocomisionadoparalapaz.gov.co/g_autodefensa/dialogos.htm, and the December 13, 2004 Report by the Inter-American Commission on Human Rights on the Process of Demobilization in Colombia, OAS /Ser.L/V/II.120 Doc. 60, para. 75.

96.13 On January 22, 2003 the State issued Decree 128, "which regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 as regards reinsertion into civil society," establishing "socioeconomic benefits" as well as other benefits for the "armed organizations outside the Law" that submitted to the demobilization program. Article 13 of the Decree provides that

[…] demobilized individuals who were part of the armed organizations outside the Law, with regard to which the Comité Operativo para la Dejación de las Armas –CODA– issues a certification […] will have the right to pardon, conditional stay of execution of the sentence, discontinuance of the proceeding, preclusion of the preliminary proceedings or the restraining orders, according to the state of the proceeding.

Article 21 of said Decree, in turn, excludes from enjoyment of these benefits

[…] those who are being tried or have been convicted for crimes that according to the Political Constitution, the Law or the international treaties signed and ratified by Colombia cannot receive this kind of benefits. [FN30]

[FN30] See Decree 128 issued on January 22, 2003, "which regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 as regards reinsertion into civil society" (file with appendixes to the brief containing pleadings and motions, appendix 43, page 3832), and expert opinion of Federico Andreu rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.14 On November 24, 2003 the State issued Decree 3360 "that regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and by Law 782 of 2002". According to one of its Whereas, "it is necessary to set specific procedural conditions to facilitate collective demobilization of organized armed groups operating outside the Law, in the framework of agreements with the National Government." [FN31]

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[FN31] See Decree 3360 issued on November 24, 2003 “which regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and by Law 782 of 2002”.

96.15 On August 31, 2004 the State issued Decree 2767 “that regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 as regards reinsertion into civil life.” According to one of its Whereas, “it is necessary to precisely and clearly set conditions that will enable the establishment of spheres of competence, allocation of functions, and development of procedures for access to the benefits mentioned in the Law [418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002], once the process of voluntary demobilization has begun.” [FN32]

[FN32] See Decree 2767 issued on August 31, 2004 “which regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 de 2002 regarding reentry into civilian life”.

96.16 The Agreement of Santa Fe de Ralito, signed on July 15, 2003, stated the agreement between the Government and the AUC regarding complete demobilization of the latter before December 31, 2005. In 2003 there were approximately 13500 members of the AUC. On November 25, 2003 874 members of the “Bloque Cacique Nutibara” of the AUC turned in their weapons. In early December 2004 about 1400 members of the “Catatumbo” Front demobilized, and including this figure, by the end of 2004 approximately 3000 members of the AUC had demobilized. In 2005 approximately 7000 members of various blocks of the AUC laid down their weapons, and therefore to date approximately 10,500 AUC paramilitary have demobilized. [FN33]

[FN33] See the Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2004/13, February 17, 2004, para. 13; High Commissioner for Peace in Colombia, Dialogue and Negotiation, Self-Defense Groups, at http://www.altocomisionadoparalapaz.gov.co/g_autodefensa/dialogos.htm; December 13, 2004 Report by the Inter-American Commission on Human Rights on the Process of Demobilization in Colombia, OAS /Ser.L/V/II.120 Doc. 60, paras. 56, 75 and 94, and Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, introduction.

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96. On June 22, 2005 the Congress of the Republic of Colombia enacted Law No. 975, called “Ley de Justicia y Paz”, “which issues provisions for the reinsertion of members of organized armed groups outside the law, to effectively contribute to the attainment of national peace, and issues other provisions for humanitarian agreements,” given legal force and published on July 25, 2005. [FN34]

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[FN34] See Law 975 issued on July 25, 2005 “which issues provisions for the reinsertion of members of organized armed groups outside the law, to effectively contribute to the attainment of national peace, and issues other provisions for humanitarian agreements” (file with appendixes to the brief submitted by the representatives with regard to ‘a supervening event constituted by enactment of Law 975 of 2005’).

96.18 The paramilitary groups are believed to be responsible for numerous politically motivated murders in Colombia and for a major part of the human rights violations in general. [FN35]

[FN35] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, para. 8, and Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2001/15, March 20, 2001, paras. 29 and 30 (file with appendixes to the brief containing pleadings and motions, appendix 39, folios 3627, 3628, 3650 and 3651).

96.19 Numerous cases of linkages between the paramilitary and members of the security forces have been documented in Colombia in connection with events similar to those of the instant case, as well as remiss attitudes by members of the security forces regarding actions by said groups. In its reports on the human rights situation in Colombia since 1997, the Office of the United Nations High Commissioner for Human Rights has documented cases representative of violations of the Right to Life, in which the government and the armed forces allegedly collabo rated with the paramilitary in murdering, threatening, or displacing the civilian population. Said collaboration between the security forces and the paramilitary has constituted a treat obstacle to observance of human rights in Colombia, in the opinion of the Office of the High Commissioner. In her 1997 report, the High Commissioner showed her concern regarding the possible participation of the armed forces together with the paramilitary in acts of violence including, among others, the massacre at Mapiripán. According to this report, the acts committed by the paramilitary constituted the greatest number of human rights violations reported in the country in 1997, including massacres, forced disappearances, and hostage taking. [FN36]

[FN36] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2001/15, March 20, 2001, paras. 131, 134 and 254 (file with appendixes to the brief containing pleadings and motions, appendix 39, pages 3627, 3628, 3650 and 3651); Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, paras. 9, 45, 61, 73, 84, 87, 112 to 116; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2004/13, February 17, 2004, paras. 22, 24, 26, 59, 65 and 73; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, February 24, 2003, paras. 34, 74 and 77 (file with appendixes to the brief containing pleadings and motions, appendix 41, pages 3703, 3712 and 3713); Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2002/17, February 28, 2002, paras. 202, 211, 356 and 365 (file

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with appendixes to the brief containing pleadings and motions, appendix 42, pages 3794, 3795, 3796, 3825 and 3827); Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 25 and 111; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/1998, March 9, 1998/16, paras. 21 and 29; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/1998/16, March 9, 1998, paras. 27, 28, 29, 34, 42, 46 and 88; expert opinion of Federico Andreu Guzmán rendered before the Inter-American Court during the public hearing held on March 7, 2005, and sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4617).

96.20 In her reports, the High Commissioner constantly refers to impunity of human rights violations and of violations of international humanitarian law committed by the paramilitary and to connivance between these groups and the security forces, as a consequence of criminal proceedings and disciplinary investigations against them that do not lead to establishing liabilities or the respective punishment. [FN37]

[FN37] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, paras. 61 and 92; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2004/13, February 17, 2004, paras. 26, 27, 28, 34 and 77; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in the year 2002, E/CN.4/2003/13, February 24, 2003, para. 77 (file with appendixes to the brief containing pleadings and motions, appendix 41, page 3713); Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2002/17, February 28, 2002, para. 211, 212 and 365 (file with appendixes to the brief containing pleadings and motions, appendix 42, pages 3794, 3795, 3796 and 3825); Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in the year 2000, E/CN.4/2001/15, March 20, 2001, paras. 57, 142, 206 and 254 (file with appendixes to the brief containing pleadings and motions, appendix 39, pages 3613, 3630, 3642, 3650 and 3651), and Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2000/11, March 9, 2000, para. 27, 47, 146 and 173.

With regard to the historical context in Mapiripán and the massacre

96.21 The territory of the Municipality of Mapiripán is 11,400 km2, and it is located at the southeastern end of the Department of Meta, 530 km from the Municipality Villavicencio. Currently, traveling by land to Mapiripán takes roughly nine hours from Villavicencio and a day and a half from San José del Guaviare, capital of the Department of Guaviare. By air, the trip is approximately half an hour from the latter place. [FN38]

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[FN38] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4990).

96.22 The Department of Meta is considered an important coca and poppy producer, as well as a livestock-raising and agricultural one. [FN39]

[FN39] See indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis); statement by Leonardo Iván Cortés Novoa, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, pages 3400 and 3401), and sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4623).

96.23 In the early nineties, paramilitary groups, several drug trafficking organizations and the Fuerzas Armadas Revolucionarias de Colombia (hereinafter "the FARC") sought to control the area where the municipality of Mapiripán is located. [FN40] Also, given the area's strategic importance, the paramilitary group of the AUC launched an armed campaign to increase its control over this territory. [FN41]

[FN40] See indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis), and statement by José Luis Parra Vásquez, rendered before the Office of the Attorney General on June 23, 1998 (file with appendixes to the brief containing pleadings and motions, appendix 17, page 3097).

[FN41] See indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis), and indictment issued on November 16, 1999 by the Office of the Attorney General (file with appendixes to the application, appendix 1, pages 42 and 43).

96.24 In 1997 the municipality of Mapiripán was under the jurisdiction of the "Joaquín París" battalion of San José del Guaviare, which was under the VII Brigade of the National Army of Colombia, headquartered at Villavicencio. [FN42] There was a troop called the 2d Mobile Brigade, under the Special Counterinsurgency Operations Command. In July 1997 the VII Brigade of the Army was under the command of General Jaime Humberto Uscátegui Ramírez, the 2d Mobile Brigade was under the command of Lieutenant Colonel Lino Hernando Sánchez Prado and the Joaquín París Battalion of San José del Guaviare was under the command of Colonel Carlos Eduardo Ávila Beltrán. Nevertheless, from July 8 to 19, 1997, then Major Hernán Orozco Castro was in command of the "Joaquín París" battalion of San José del Guaviare, substituting for Colonel Carlos Eduardo Ávila Beltrán, who was on vacations. [FN43]

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[FN42] See June 21, 1999 ruling issued by the National Human Rights Unit (file with appendixes to the application, appendix 20, page 320).
[FN43] See Judgment of February 15, 2005 issued by the Criminal Chamber of the High Court of the Court District of Bogotá (file with evidence tendered by the State, pages 4746 to 4749); June 21, 1999 ruling issued by the National Human Rights Unit (file with appendixes to the application, appendix 20, page 320); disciplinary ruling of April 24, 2001 issued by the Deputy Public Prosecutor of the Nation (file with appendixes to the application, appendix 61, page 1108), and sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4625).

96.25 The marine infantry was stationed at the place known as "El Barrancón", near the municipalities of Charras and Mapiripán. The security forces were also present at the airport in San José del Guaviare, under control of the Army and the Narcotics Police. The "Joaquín París" battalion was in charge of the airport. [FN44]

[FN44] See Judgment of February 15, 2005 issued by the Criminal Chamber of the High Court of the Court District of Bogotá (file with evidence tendered by the State, pages 4741, 4742, 4738, 4745, 4748 and 4749).

96.26 During July 1997 the 2d Mobile Brigade was carrying out training activities in "El Barrancón", a place near the municipalities of Charras and Mapiripán. [FN45]

[FN45] See Judgment of February 15, 2005 issued by the Criminal Chamber of the High Court of the Court District of Bogotá (file with evidence tendered by the State, pages 4746 to 4749).

96.27 In early 1997 the AUC held several meetings to organize their entry into the area of Mapiripán and the inhabitants of said municipality were declared to be military objectives by paramilitary leader Carlos Castaño Gil, because, "according to him, a consolidated front of the insurgency was operating there, with absolute control of a territory appropriate for a complete cycle of drug trafficking, planting, processing, and trading." [FN46]

[FN46] See June 21, 1999 ruling issued by the National Human Rights Unit (file with appendixes to the application, appendix 20, page 320); sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4623), and indictment issued on November 16, 1999 by the Office of the Attorney General (file with appendixes to the application, appendix 1, page 42).

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96.28 When the AUC arrived in the Municipality of Mapiripán, during the events of July 1997, neither the Mayor nor the officers of the Mayor's office were in the town. [FN47]

[FN47] See statement of a witness in confidence, rendered before the Office of the Attorney General on July 24, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 29, page 3389), and sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4623).

The Facts of July 1997

96.29 Paragraphs 96.30 to 96.47 are the facts that this Court deems proven based on the acknowledgment of responsibility by the State, which includes "the facts stated in section B of Chapter VI 'The Facts of July 1997' of the application filed by the Inter-American Commission" (supra para. 34).

96.30 On July 12, 1997 approximately one hundred members of the AUC landed in the airport at San José de Guaviare on irregular flights coming from Neclocí and Apartadó and were picked up by members of the Army without the latter applying any sort of control measures.

96.31 According to the Attorney General's Office, the Colombian Army allowed the airplanes that brought said paramilitary to land without recording them in the books or any other way, and allowed them to freely board the trucks that awaited the group there, "as if it were a military operation, customarily exempted from said control."

96.32 The Colombian army provided transportation for the paramilitary to Mapiripán. The paramilitary were transported from the airport in two "reo" type trucks that the Army usually uses, which were authorized to enter the landing strip due to a call made by a person who identified himself as an officer of the "Joaquín París" battalion. The trucks went to a place near the so-called "Cattle Trail" which leads toward the plains and the jungle. They were joined on the road by paramilitary from Casanare and Meta and from there they went by river, through "El Barrancón" –where the 2d Mobile Brigade and the Marine Infantry were stationed– they continued their trip with no difficulty to Charras, on the other side of the Guaviare River, facing Mapiripán. During the trip from San José del Guaviare to Mapiripán the members of the paramilitary group went through the training areas of the troops of the 2d Mobile Brigade, under the command of Colonel Lino Hernando Sánchez Prado, without being stopped.

96.33 On July 14, 1997 the AUC entered the village of Charras, assembled the inhabitants in the town square, and handed out the magazine "Colombia Libre", including a leaflet entitled "To the people of Guaviare," signed by the "Guaviare Front" of the AUC, threatening to kill anyone who "paid taxes" to the FARC.

96.34 At dawn on July 15, 1997, more than 100 armed men surrounded Mapiripán by land and river. The members of the paramilitary group wore uniforms whose use is restricted to the

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military forces, bore short- and long-range weapons, also restricted to the State, and used high frequency radios.

96.35 When they arrived in Mapiripán, the paramilitary took control of the town, of communications, and of the public offices, and intimidated its inhabitants, kidnapping and killing other inhabitants. The statement by Edison Londoño Niño, a member of the 2d Mobile Brigade, on collaboration between the members of the Army and of the AUC, shows that they not only refrained from impeding their arrival in Mapiripán, but also provided munitions and communications.

96.36 Leandro Iván Cortés Novoa, who was then the municipal judge with jurisdiction in both civil and criminal cases in Mapiripán, alarmed by the arrival of the AUC, contacted the Deputy Attorney for Human Rights and the High Court of the Court Circuit of Meta, who refrained from conducting investigations. Cortés Novoa also reported the situation and the presence of Carlos Castaño Gil to Colonel Hernán Orozco Castro, commander of the "Joaquín París" battalion. A statement by Leonardo Iván Cortés Novoa rendered in confidence before the Attorney General's Office asserted that:

On July 14, 1997, at four thirty a.m., approximately 120 armed individuals arrived, saying that they came [...] from the Urabá region of Antioquia, that they were the self-defense groups of Urabá and Córdoba, under Carlos Castaño Gil, and that they had arrived in San José del Guaviare in a Hercules plane of the Armed Forces.
[...]
Every day, about 7:30 p.m. these individuals, through mandatory orders, had the electric generator turned off and every night, through cracks in the wall, I watched kidnapped people go by, with their hands tied behind their backs and gagged, to be cruelly murdered in the slaughterhouse of Mapiripán. Every night we heard screams of people who were being tortured and murdered, asking for help
[...]
they killed several people who were well known in the town; Sinaí Blanco, a gasoline merchant who charged a tax that the FARC forced him to collect; Ronald Valencia, an employee of the mayor's office, […] they tortured him, murdered him and beheaded him, and they left his head in the middle of the street that goes to the secondary school, and left the body near the road; and Anselmo Trigos, for (collaborating with) the guerrillas. [FN48]

[FN48] See statement by Leonardo Iván Cortés Novoa, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, pages 3400 and 3401).

96.37 On July 15, 1997 General Jaime Humberto Uscátegui Ramírez learned of the presence of the AUC in Mapiripán and of the imminent attack against the lives of its inhabitants. Major Hernán Orozco Castro sent Brigadier General Jaime Humberto Uscátegui, Commander of the VII Brigade, a memorandum with urgent information reporting on the incursion and foreseeing the violation of the fundamental rights of the population of Mapiripán.

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96.38 The Attorney General's Office concluded that Brigadier General Jaime Humberto Uscátegui Ramírez, Commander of the VII Brigade, and Colonel Lino Hernando Sánchez Prado, Commander of the 2d Mobile Brigade, demonstrated complete functional and operational inactivity despite knowing about the massacre. Furthermore, said Office established that in face of the arrival of the AUC, the troops of the Joaquín París Battalion were mobilized from San José de Guaviare toward other locations, leaving the population of said places and of Mapiripán unprotected. Lieutenant Orozco Castro stated that when it became necessary to send military forces to Mapiripán, they had been deployed elsewhere in places such as Puerto Concordia, el Retorno and Calamar. On July 15, 1997, the last companies of the Joaquín París Battalion were ordered to go to Calamar, despite the fact that there was no confirmation of public order disturbances in that place. Mobilization of the Army troops was unjustified and it was based on conjecture or mere contingencies.

96.39 Testimony of the survivors shows that on July 15, 1997 the AUC separated 27 individuals identified on a list as alleged auxiliaries, collaborators, or sympathizers of the FARC, and that these persons were tortured and dismembered by a member of the AUC known as the "Mochacabezas". The paramilitary remained in Mapiripán from July 15 to 21, 1997, during which time they impeded free movement of the inhabitants of said municipality, and they tortured, dismembered, eviscerated and decapitated approximately 49 individuals and threw their remains into the Guaviare River. Furthermore, once the operation was completed, the AUC destroyed a major part of the physical evidence with the aim of obstructing the gathering of evidence.

96.40 The testimony shows that José Rolan Valencia, a dispatcher at the airport, was decapitated; Sinaí Blanco Santamaría was beaten and shot to death; Antonio María Barrera, aka "Catumare", was tortured for several hours and then dismembered. Gustavo Caicedo Rodríguez and brothers Hugo Fernando Martínez Contreras and Diego Armando Martínez Contreras, 15 and 16 years old, respectively, were killed together with the Afrodescendant known as "Nelson", in addition to José Alberto Pinzón López, Luis Eduardo Pinzón López, Jorge Pinzón López, and Enrique Pinzón López. Aside from these persons, an April 12, 2000 writ by the Deputy Public Prosecutor's Office before the High Court of the Court Circuit states that "unfortunately there seem to be many more missing persons than those on whom we have information" and Álvaro Tovar Morales, Jaime Pinzón and Raúl Morales were killed at the place called La Cooperativa. The April 24, 2001 ruling of the Attorney General's Office (infra para. 96.134), which dismissed Brigadier General Uscátegui, stated that between July 15 and 20, 1997, in the municipality of Mapiripán, an unidentified male individual and another individual by name Pacho, whose surname is unknown, were killed, and that a male whose surname is Morales but whose name is unknown, together with a female by name Teresa, surname unknown, were also killed at la Cooperativa, as well as "[...] an as yet indeterminate number of individuals."

96.41 As a consequence of the modus operandi used to terrorize the population, carry out the massacre and destroy and get rid of the bodies of the victims, it was not possible for the authorities to fully identify them. For example, the paramilitary did not allow the Judge of Mapiripán to remove a body that had floated toward the port of "El Matadero".

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96.42 The security forces arrived in Mapiripán on July 22, 1997, after the massacre had ended and subsequent to the arrival of the media, when the paramilitary had already destroyed much of the physical evidence.

96.43 The incursion of the paramilitary in Mapiripán was an act that had been meticulously planned several months before June 1997, carried out with logistic preparatory work and with the collaboration, acquiescence, and omissions by members of the Army. Participation of agents of the State in the massacre was not limited to facilitating entry of the AUC into the region, as the authorities knew of the attack against the civilian population in Mapiripán and they did not take the necessary steps to protect the members of the community.

96.44 Omissions by the VII Brigade are not merely non-fulfillment of its legal duty to control the area, bur rather, according to the Attorney General's Office, they involved "abstaining from action, necessarily in connivance with the illegal armed group, as well as effective positive attitudes tending to enable the paramilitary to attain their objective, as they undoubtedly would not have been able to act without that support."

96.45 Brigadier General Jaime Humberto Uscátegui Ramírez apparently took steps to cover up the omission. For example, he ordered Lieutenant Colonel Orozco Castro to modify the content of official letter 2919 of July 15, 1997, which reported on the facts that were taking place in Mapiripán. In this regard, Lieutenant Orozco Castro stated that one month after the original official letter had been sent:

[…] the pressure began, the intimations for him to change the official letter. General Jaime Humberto Uscátegui called [him] every day, concerned about the original official letter[. Lieutenant Orozco Castro had the] original and was forced to change it to save the prestige of a General, to avoid a scandal, [he] was very frightened, [he] was threatened indirectly, and [he] saw no other option than to change the official letter.

96.46 Omissions by the VII Brigade included lack of collaboration with the judicial authorities who sought to visit the site of the facts. In this regard, José Luis Parra Vásquez, 12th Deputy Public Prosecutor before the Regional Judges, attached to the investigation, stated that:

Despite the fact that there were four or five helicopters […] at the Joaquín París Battalion, [they] were not allowed to use one to go to Mapiripán together with the Presidential delegate, because they were subject to orders by General Harold Bedoya and General Manuel José Bonet, who were at […] el Barrancón in the Department of Guaviare, five minutes flying time from San José. […] The trip was finally made 24 hours later in an airplane of the Drug Enforcement Police […].

Therefore, the Public Prosecutor's Office, together with members of the Security Forces and a delegate of the Presidency of the Republic, were only able to visit Mapiripán on July 23, 1997.

96.47 The methodology followed in executing the massacre and destroying the bodies of the victims, together with the terror spread among the surviving inhabitants of Mapiripán to cause their displacement, have obstructed full identification of the victims of the massacre, despite the

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fact that there is certainty that a large number of individuals were tortured and murdered during those days in July 1997.

With regard to the executed and missing persons

96.48 While the exact number of persons detained, tortured, executed and/or missing in the Mapiripán Massacre has not been established, it has been accepted that they were approximately 49. It is possible that some of the missing or executed individuals were part of the floating population of the municipality. [FN49]

[FN49] See decision on arrest warrant issued on May 20, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the application, appendix 35, page 497); indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis); April 12, 2000 order, issued by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the application, appendix 2, pages 65 and 66), and statement by Leonardo Iván Cortés Novoa, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, page 3399 and 3400).

96.49 In this regard, the National Human Rights Unit of the Office of the Attorney General stated that

[…] after the Mapiripán Massacre was carried out [it was] Carlos Castaño Gil himself who, before the media and as a "victory report" state[d] that 49 individuals were eliminated in the paramilitary incursion in Mapiripán, making it possible to tentatively establish an estimate of the number of victims, a statement that was supported by that of doctor Leonardo Iván Cortés Novoa who asserted that approximately 26 individuals were killed and missing, together with the intelligence reports by members of the security forces who were carrying out covert operations in the area, stating that there were approximately 30, in addition to what has been asserted by paramilitary José Pastor Gaitán Ávila who says that he counted 23 persons murdered. This allows us to conclude that there was a large number of victims, no less than twenty. […] [FN50]

[FN50] See March 10, 2003 indictment, issued by the National Human Rights Unit (file with appendixes to the application, appendix 42, page 707).

96.50 Carlos Castaño Gil, the head of the paramilitary group, in turn, expressed to the media that what happened in Mapiripán "was the greatest combat activity in all the history of the self-defense groups. We had never killed 49 members of the FARC or recovered 47 rifles [. …] There will be many more Mapiripanes […]" [FN51].

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[FN51] See indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis).

96.51 Among the executed or missing persons, the identities of the following have been established: José Rolan Valencia, Sinaí Blanco Santamaría, Antonio María Barrera Calle, aka "Catumare", Álvaro Tovar Muñoz, aka "el tomate", Gustavo Caicedo Rodríguez, Jaime Riaño Colorado, brothers Enrique, Luis Eduardo, Jorge and José Alberto Pinzón López, as well as minors Hugo Fernando Martínez Contreras and Diego Armando Martínez Contreras. [FN52]

[FN52] See autopsy report of José Rolan Valencia (file with appendixes to the application, appendix 32, page 414); April 12, 2000 order, issued by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the application, appendix 2, pages 65 and 66); July 30, 2003 order, issued by the Unit of Deputy Public Prosecutors' Offices before the High Court of Bogotá (file with appendixes to the application, appendix 39, page 554); report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, pages 4979 and 4980); death certificate of Sinaí Blanco Santamaría (file with evidence to facilitate adjudication provided by the representatives); March 10, 2003 indictment, issued by the National Human Rights Unit (file with appendixes to the application, appendix 42, page 693); June 18, 2003 conviction, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the application, appendix 4, page 116 b); testimony of Luz Mery Pinzón rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statements made as testimony before a notary public (affidavits) by María Teresa, Esther and Sara Paola Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4514, 4515, 4517, 4518, 4520 and 4522).

96.52 According to the information supplied by the State in its brief with final pleadings and in an April 6, 2005 document signed by the Attorney General's Office, the following persons have been individually identified in the ongoing criminal proceeding as victims of the events in Mapiripán: Jaime Pinzón, Raúl Morales, Edwin Morales, Manuel Arévalo, Omar Patiño Vaca, Eliécer Martínez Vaca, Uriel Garzón and Ana Beiba Ramírez, as well as Agustín N.N., the "chairman of Acción Comunal in Caño Danta", Pacho N.N., Teresa N.N or Teresa "la muerte", N.N. "la arepa", a black man called N.N. Nelson (black man), N.N. Morales, a corpse identified as N.N, a male N.N., a woman from the corregimiento of Charras and a man from La Cooperativa N.N. [FN53] The file before the Court also shows that there are persons who were executed or are missing as a consequence of the events in Mapiripán, identified as: a son of a man called Marco Tulio Bustos; an unidentified baby, and an unidentified woman, allegedly the son and common-law spouse, respectively, of N.N. Nelson. [FN54]

[FN53] See March 10, 2003 indictment, issued by the National Human Rights Unit (file with appendixes to the application, appendix 42, page 693); April 12, 2000 order, issued by the

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Deputy Public Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the application, appendix 2, pages 65 and 66); June 18, 2003 conviction, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the application, appendix 4, page 116b); report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4984); application filed on October 24, 1998 by Beatriz Rojas Vargas et al., before the Administrative Law Court of Meta (file with appendixes to the application, appendix 62, page 1200); report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4984); July 30, 2003 order, issued by the Unit of Deputy Public Prosecutors' Offices before the High Court of Bogotá (file with appendixes to the application, appendix 39, pages 554 and 555); and report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4995), and brief with final pleadings filed by the State (file on the merits, volume IV, page 984).

[FN54] See testimony of Luz Mery Pinzón rendered before the Inter-American Court during the public hearing held on March 7, 2005; statement by Leonardo Iván Cortés Novoa rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, page 3399).

96.53 The bodies of Sinaí Blanco Santamaría, José Rolan Valencia and an unidentified person, "N.N.", were found; autopsies were performed on the latter two. [FN55]

[FN55] See autopsy reports for José Rolan Valencia and an unidentified person (file with appendixes to the application, appendix 32, pages 414 to 416).

96.54 José Rolan Valencia was decapitated. His spouse, Marina Sanmiguel Duarte, "dragged his body and with the other hand dragged his head to put them together." José Ronal Valencia was buried in Mapiripán. [FN56]

[FN56] See autopsy report of José Rolan Valencia (file with appendixes to the application, appendix 32, page 415); statements rendered as testimony before a notary public (affidavits) by Carmen Johanna Jaramillo Giraldo and Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4540 and 4536); burial permit issued on July 20, 1997 by the Statistics Bureau [Departamento Administrativo Nacional de Estadística] (file with appendixes to the brief containing pleadings and motions, appendix 55, page 4077a), and sworn statement rendered by witness Yinda Adriana Valencia Sanmiguel on February 16, 2005 (file with statements rendered before or authenticated by a notary public, page 4573).

96.55 Sinaí Blanco Santamaría and N.N. were beheaded. Nory Giraldo, spouse of Sinaí Blanco Santamaría, and her daughter, Carmen Johanna Jaramillo Giraldo, found his decapitated body at

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the police post. Sinaí Blanco's body was removed from Mapiripán by Nory Giraldo, for burial in San Martín. [FN57]

[FN57] See autopsy reports of José Rolan Valencia and an unidentified person (file with appendixes to the application, appendix 32, page 416) (file with appendixes to the brief containing pleadings and motions, appendix 47, pages 3862 and 3863); statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4540), and testimony of Luz Mery Pinzón rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.56 At the time of the instant Judgment, more than eight years have passed since the facts and the remains of other victims have not been found or identified.

Internal displacement in Colombia and its consequences in the case of Mapiripán

96.57 The problem of forced internal displacement in Colombia, the current dynamics of which began in the 1980s, affects large population groups and has progressively worsened. Government sources recorded 985,212 displaced persons between 1995 and 2002. According to the United Nations High Commissioner for Human Rights, while there has been a reduction in the number of new cases of displacement, in 2004 the total number of displaced persons increased with regard to previous years. The Red de Solidaridad Social records approximately 1.5 million displaced persons, [FN58] while other government sources estimate 2.5 to 3 million displaced individuals. [FN59]

[FN58] See Unified record of the displaced population [Registro Único de Población Desplazada], accrued number of individuals included due to displacement up to August 31, 2005 (http://www.red.gov.co/Programas/Apoyo_Integral_Desplazados/Registro_SUR/Registro_SUR_Agos_31_2005/Registro_SUR_Sept_10_web_Acumulado.htm).

[FN59] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, page 5153); 2002 Annual Report on Human Rights and International Humanitarian Law and Avances Periodo Presidencial 2003, issued by the Ministry of National Defense of the Republic of Colombia, page 81; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, para. 14; data from the Humanitarian Assistance Chamber of the United Nations, statistics of the Red de Solidaridad Social, and data supplied by the presidential advisor for Social Action, Luis Alfonso Hoyos, ttp://eltiempo.terra.com.co/hist_imp/HISTORICO_IMPRESO/poli_hist/2005-05-19/ARTICULO-WEB-NOTA_ INTERIOR_HIST-2073692.html.

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96.58 It has been established that the humanitarian crisis caused by the phenomenon of internal displacement is of such magnitude that it involves a "massive, protracted, and systematic violation" of various basic rights of this group (infra paras. 174 and 177) [FN60].

[FN60] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, pages 5140, 5153, 5154, 5189, 5192, 5193 and 5195).

96.59 The reasons for and expressions of the acute vulnerability of displaced persons have been characterized from various perspectives. Said vulnerability is reinforced by its rural provenance and grave psychological repercussions have been established in those affected by displacement. This problem especially affects women, who are primarily the heads of households and constitute more than half the displaced population. Generally speaking, women, children and youths are the groups most severely affected by the displacement. The crisis of domestic displacement, in turn, causes a security crisis, because the groups of internally displaced persons become a new focus or resource for recruitment by the paramilitary groups themselves, by drug traffickers, and by the guerrilla forces. Return of the displaced persons to their homes in most cases lacks the necessary conditions of safety and dignity for them. [FN61]

[FN61] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, page 5154); judgment T-721/03 of August 20, 2003, issued by the Eighth Appellate Chamber of the Constitutional Court; National Program for comprehensive care of the population displaced by violence [Programa Nacional de atención integral a la población desplazada por la violencia] - CONPES – Presidential Advisory Office on Human Rights [Consejería Presidencial para los Derechos Humanos], document 2804 of September 13, 1995, National Planning Department of the Ministry of the Interior; Economic, Social and Cultural Rights, Report of the Special Rapporteur on adequate standard of living, E/CN.4/2005/48, 3 March 2005, para. 38, and report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, February 24, 2003, para. 94 (file with appendixes to the brief containing pleadings and motions, appendix 41, page 3717).

96.60 The departments that have suffered this phenomenon most severely are Antioquia, Santander, Meta, Córdova, and Boyacá, as the regions "responsible for expelling" most of the affected population. The departments of Cundinamarca, Santander, Antioquia, Córdova, Norte de Santander, Boyacá, and Atlántico, in turn, have received most of the displaced population groups. Since 2001 the phenomenon of displacement has become more acute in Meta, among other departments. [FN62]

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[FN62] See National Program for comprehensive care of the population displaced by violence - CONPES – Presidential Advisory Office on Human Rights document 2804 of September 13, 1995, National Planning Department of the Ministry of the Interior, page 3; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, February 24, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 41, page 3716), and Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2001/15, March 20, 2001 (file with appendixes to the brief containing pleadings and motions, appendix 39, page 3630).

96.61 There has been a great variety of public policies regarding the problem of displaced population, including multiple laws, decrees, documents of the National Council on Economic and Social Policy [Consejo Nacional de Política Económica y Social, CONPES], presidential orders and directives, and support programs by individuals or private or international bodies. The above include Law 387 of July 18, 1997, "which adopts measures to prevent forced displacement; to care for, protect, and socio-economically stabilize and reinforce the population internally displaced by violence in the Republic of Colombia"; Decree 250 of February 7, 2005, "which issues the National Plan for Comprehensive Care of the Population Displaced by Violence and issues other provisions;" and Decree 2.007 of September 24, 2001, "which partially regulates Articles 7, 17 and 19 of Law 387 of 1997, regarding timely support for the rural population displaced by violence, in the framework of voluntary return to their places of origin or their resettlement in another place, and which adopts measures to prevent this situation." [FN63]

[FN63] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, pages 5169, 5170, 5171, 5172, 5181 and 5233); Law 387 of 1997 (July 18), "which adopts measures to prevent forced displacement; to care for, protect, and socio-economically stabilize and reinforce the population internally displaced by violence in the Republic of Colombia" (file with appendixes to the brief containing pleadings and motions, appendix 53, page 3938), and Decree 250 of February 7, 2005, "which issues the National Plan for Comprehensive Care of the Population Displaced by Violence and issues other provisions".

96.62 Despite the actions carried out by certain government agencies to attenuate the problems of the displaced population, and important progress attained, it has not been possible to comprehensively protect the rights of the displaced population, primarily due to the precarious institutional capacity to implement State policies and the insufficient allocation of resources. [FN64]

[FN64] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, page 5174).
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96.63 The massacre in Mapiripán, combined, inter alia, with intimidation by the paramilitary, with what they experienced during the days of the massacre, with the damage suffered by the families and the possibility of further damage, for having to testify or already having done so, caused the internal displacement of complete families from Mapiripán. Some of the displaced persons did not live in Mapiripán itself at the time of the facts, but they were likewise forcefully displaced as a consequence of those events. [FN65]

[FN65] See June 18, 2003 conviction, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the application, appendix 4, page 143b); and August 19, 1997 report on the facts in Mapiripán, signed by Major General Agustín Ardila Uribe (file with appendixes to the application, appendix 26, page 358); statement by Mariela Contreras Cruz, rendered before the Office of the Attorney General on October 17, 2002 (file with appendixes to the brief containing pleadings and motions, appendix 35, page 3526); statement by Leonardo Iván Cortés Novoa, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, pages 3395 to 3403); August 5, 1997 reply regarding the facts in Mapiripán, signed by Brigadier General Jaime Humberto Uscátegui Ramírez, addressed to the Provincial Prosecutor's Office of Villavicencio (file with appendixes to the application, appendix 30, page 375); testimony of Luz Mery Pinzón López, rendered before the Inter-American Court during the public hearing held on March 7, 2005; statement by Mariela Contreras Cruz, rendered before the Office of the Attorney General on October 17, 2002 (file with appendixes to the brief containing pleadings and motions, appendix 35, page 3526); testimony of Mariela Contreras Cruz, Nory Giraldo de Jaramillo, Luz Mery Pinzón López, and Marina Sanmiguel Duarte, rendered before the Inter-American Court during the public hearing held on March 7, 2005; indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis); statements rendered as testimony before a notary public (affidavits) by Sara Paola Pinzón López, Yur Mary Herrera Contreras, Nadia Mariana Valencia Sanmiguel, and Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4521, 4525, 4533, 4536 and 4537 and 4541), and sworn statements rendered by witnesses Maryuri Caicedo Contreras, Yinda Adriana Valencia Sanmiguel, and Johanna Marina Valencia Sanmiguel, and witness Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, pages 4566, 4569, 4573, 4574, 4564 and 4577).

96.64 Some of the inhabitants displaced from Mapiripán who have been identified are Jesús Antonio Morales, Nery Alfonso Ortiz, Ana Betulia Alfonso, Luz Helena Molina, Ana Tulia Agudelo, Norberto Cortés, Margarita Franco Ramírez, Leonardo Iván Cortés Novoa, Mariela Contreras Cruz, Rusbel Asdrúbal Martínez Contreras, Maryuri and Gustavo Caicedo Contreras, Zuli Herrera Contreras, Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo, Marina Sanmiguel Duarte, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel, Teresa López de Pinzón, and Luz Mery Pinzón López. Among the above, the following were minors at the time of the facts: Rusbel Asdrúbal Martínez

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Contreras, Maryuri and Gustavo Caicedo Contreras, and Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel, and Carmen Johanna Jaramillo Giraldo. [FN66]

[FN66] See statement by Mariela Contreras Cruz, rendered before the Office of the Attorney General on October 17, 2002 (file with appendixes to the brief containing pleadings and motions, appendix 35, page 3526); testimony of Mariela Contreras Cruz, Nory Giraldo de Jaramillo, Luz Mery Pinzón López, and Marina Sanmiguel Duarte, rendered before the Inter-American Court during the public hearing held on March 7, 2005; indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis); statements rendered as testimony before a notary public (affidavits) by Sara Paola Pinzón López, Yur Mary Herrera Contreras, Nadia Mariana Valencia Sanmiguel, and Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4521, 4525, 4533, 4536 and 4537 and 4541); sworn statements rendered by witnesses Maryuri Caicedo Contreras, Yinda Adriana Valencia Sanmiguel, and Johanna Marina Valencia Sanmiguel, and witness Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, pages 4566, 4569, 4573, 4574, 4564 and 4577); statement made by a witness in confidence, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 5, page 2950); statement by Leonardo Iván Cortés Novoa, rendered before the Office of the Attorney General on August 21, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 30, pages 3395, 3396 and 3402); October 28, 2002 ruling issued by the National Human Rights and International Humanitarian Law Unit (file with appendixes to the application, appendix 43, pages 739); birth certificates of Gustavo Caicedo Contreras, Rúsbel Asdrúbal Martínez Contreras, Maryuri Caicedo Contreras (file with appendixes to the brief containing pleadings and motions, appendix 58, pages 4092 to 4095); birth certificates of Nadia Mariana Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johanna Marina Valencia Sanmiguel, Roland Andrés Valencia Sanmiguel, and Ronald Mayiber Valencia Sanmiguel (file with appendixes to the brief containing pleadings and motions, appendix 55, pages 4067 to 4076 and file with evidence to facilitate adjudication submitted by the representatives), and birth certificate of Carmen Johanna Jaramillo Giraldo (file with appendixes to the brief containing pleadings and motions, appendix 56, pages 4081).

96.65 Some of the next of kin of the victims identified, specifically Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo Giraldo, Luz Mery Pinzón López, the family of Mariela Contreras Cruz and the Valencia Sanmiguel family, who after the facts had to leave Mapiripán, have received help or support from the State as displaced persons (infra. paras. 96.141, 96.157, 96.163 and 96.169). [FN67]

[FN67] See statements rendered as testimony before a notary public (affidavits) by Sara Paola Pinzón López, Carmen Johanna Jaramillo Giraldo, and Yur Mary Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4521,

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4541 and 4525), and testimony of Luz Mery Pinzón López rendered before the Inter-American Court during the public hearing held on March 7, 2005.

96.66 Since March 2002 the State has taken certain steps to locate and support the population displaced from Mapiripán. [FN68]

[FN68] See minutes of the meeting of the Security Councils of the Municipality of Mapiripán, on March 26, 2002 and minutes of the meeting of the Municipal Council for care of the displaced population of the Municipality of Mapiripán, Meta, on May 29, 2002 (file with appendixes to the brief with the reply to the application, appendix 3, pages 4469 and 4476), and Local contingency plan for care of the population displaced by violence (Municipality of Mapiripán, Meta) in 2003 (file with appendixes to the brief with the reply to the application, appendix 5, pages 4501 to 4508).

96.67 In June 2003 the Comité para la Atención de Población Desplazada por la Violencia submitted its Local Contingency Plan to Care for the Displaced Population of the municipality of Mapiripán, Meta. Said committee was constituted by officials of the Mayor's office in Mapiripán, the Army, the health center, the municipal "personería", the educational nucleus, and the government. [FN69]

[FN69] See minutes of the meeting of the Municipal Council for care of the displaced population of the Municipality of Mapiripán, Meta, on May 29, 2002 (file with appendixes to the brief with the reply to the application, appendix 3, page 4469).

With regard to domestic judicial action and proceedings

Regular criminal jurisdiction

96.68 On July 22, 1997 the Section Public Prosecutor of Villavicencio undertook the investigation of the facts that took place in Mapiripán and ordered the removal of the bodies, such exhumations as might be necessary, and receiving the testimony of the civil authorities of the municipality. [FN70]

[FN70] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4995).

96.69 On July 23, 1997 the 12th Deputy Public Prosecutor's Office before the Regional Judges, based in San José del Guaviare, began a preliminary investigation of the facts that took place in the town of Mapiripán. [FN71]

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[FN71] See conviction of September 30, 2003, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 34, page 3466).

96.70 On July 23, 1997 a "judicial committee" went to the Municipality of Mapiripán. There, they heard the statement of the Municipal Police Inspector and they inspected the bodies of José Rolan Valencia, Sinaí Blanco Santamaría and an unidentified man. [FN72]

[FN72] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4995).

96.71 On July 23, 1997 the Specialized Prosecutor of San José del Guaviare took cognizance of the investigative steps forwarded by the Section Public Prosecutor of Villavicencio, and heard the statement by the Mayor of Mapiripán and by a witness in confidence. One day later, an order was issued to expand the testimony of the latter, and to conduct "such tests as may be necessary to identify the victims." [FN73]

[FN73] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4996).

96.72 On July 28, 1997 the National Directorate of the Public Prosecutors' Offices decided to assign the investigation to the National Human Rights Unit, which undertook it on August 5, 1997 and ordered expansion of the testimony and receiving new testimony. These statements, including those of certain next of kin and civil authorities in Mapiripán, were received during August 1997. Various judicial inspections were also conducted. [FN74]

[FN74] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, pages 4996 to 4998).

96.73 Photographic records of the exhumations were obtained on August 4, 1997. [FN75]

[FN75] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4996).

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96.74 On September 30, 1997 the National Human Rights Unit ordered expansion of the testimony of the civilian authorities of Mapiripán, as well as sending official letters to the media to obtain copies of the news disseminated regarding public acknowledgment of responsibility for the facts by Carlos Castaño Gil. [FN76]

[FN76] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4999).

96.75 On November 27, 1997 the Deputy Public Prosecutor's Office for the Military Forces conducted a "judicial inspection of the disciplinary proceeding" with regard to the facts that took place in Mapiripán. The Defensoría del Pueblo conducted a judicial inspection on December 30, 1997. [FN77]

[FN77] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4999).

96.76 The Personería of Villavicencio forwarded 58 statements rendered on September 19 and 22 and on October 7, 1997 by displaced persons regarding the facts in Mapiripán. [FN78]

[FN78] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4999).

96.77 On January 5, 1998 an arraignment order was issued as well as an order requiring the formal attachment of Carlos Castaño Gil and Julio Enrique Florez to the proceeding. Arrest warrants were also issued against said individuals. [FN79]

[FN79] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 5000).

96.78 On July 21, 1998 the Regional Public Prosecutor's Office of the Human Rights Unit issued a warrant for preventive detention of National Army Sergeants Juan Carlos Gamarra Polo, in charge of intelligence for the "Joaquín París" battalion, and José Miller Ureña Díaz, Commander of the military unit stationed at the airport of San José del Guaviare, as perpetrator and co-perpetrator, respectively, of the crimes of conspiracy to commit a crime, terrorism, aggravated homicide, and aggravated kidnapping. [FN80]

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[FN80] See ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, pages 832, 833 and 836).

96.79 On March 25, 1999 the 31st Criminal Military Instruction Judge asserted the competence of Regular Jurisdiction to hear the Mapiripán Massacre, base on the following arguments:

A study of the evidentiary material gathered establishes that the documents created by Major Hernán Orozco Castro, and received by Brigadier General Jaime Humberto Uscátegui refer to events prior to the sad events in the municipality of Mapiripán during July 1997, regarding which there is already a criminal investigation by the Attorney General's Office, Human Rights Public Prosecutor's Office Unit, forwarded due to procedural jurisdiction [by the] command of the Joaquín París Battalion, as trial court; therefore, since there cannot be two investigations on the same facts, the proceedings must be remitted in whatever state they are to the investigative unit in charge of said proceeding. [FN81]

[FN81] See application filed before the High Court of Bogotá on December 9, 1999 by Nory Giraldo de Jaramillo (file with appendixes to the application, appendix 56, page 875).

96.80 On March 30, 1999 the Public Prosecutor's Office of the National Human Rights Unit decided not to issue an arrest warrant against Lieutenant Colonel Hernán Orozco Castro, since he had "provided serious and credible explanations that exonerate him from any arrest warrants against him." [FN82]

[FN82] See March 30, 1999 ruling, issued by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the application, appendix 37, page 534).

96.81 The Public Prosecutor's office, a body of the Attorney General's Office, filed an appeal against the March 30, 1999 ruling (supra para. 96.80). [FN83]

[FN83] See ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, page 817).

96.82 On April 7, 1999 the National Human Rights Unit of the Office of the Attorney General filed charges under regular venue against the following individuals and for the following crimes:

i. Carlos Castaño Gil, as instigator of the crimes of aggravated homicide, aggravated kidnapping, terrorism and conspiracy to commit a crime. The arrest warrant against him was also reiterated;

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ii. Julio Enrique Florez González, as direct perpetrator of the crimes of aggravated homicide, aggravated kidnapping, terrorism and conspiracy to commit a crime. The arrest warrant against him was also reiterated;
iii. Luis Hernando Méndez Bedoya, aka "René", as instigator of the crimes of aggravated homicide, aggravated kidnapping, terrorism and conspiracy to commit a crime;
iv. José Vicente Gutiérrez Giraldo, as perpetrator of the crime of conspiracy to commit a crime;
v. Pilot Juan Manuel Ortiz Matamoros, as perpetrator of the crime of falsifying a private document and an accomplice to conspiracy to commit a crime. The investigation against him regarding the crimes of aggravated homicide, aggravated kidnapping and terrorism was precluded;
vi. Pilot Helio Ernesto Buitrago León, as an accomplice to the crime of conspiracy to commit a crime. The investigation against him regarding the crimes of aggravated homicide, aggravated kidnapping and terrorism was precluded;
vii. Pilot Jorge Luis Almeira Quiroz, as perpetrator of the crimes of falsifying a public document and as an accessory after the fact;
viii. Second Sergeant Juan Carlos Gamarra Polo, as perpetrator of the crime of conspiracy to commit a crime, and as an accomplice to the crimes of aggravated homicide, aggravated kidnapping and terrorism;
ix. Sergeant José Miller Ureña Díaz, as co-perpetrator of the crimes of conspiracy to commit a crime, aggravated homicide, aggravated kidnapping and terrorism. [FN84]

[FN84] See indictment issued on April 7, 1999 by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 27, page 3207 bis), and ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, page 817).

96.83 The Public Prosecutor's Office challenged the April 7, 1999 ruling of the National Human Rights Unit of the Public Prosecutor's Office of the Human Rights Unit (supra para. 96.82) in an application for reconsideration and appeal to the Deputy Public Prosecutor's Office before the High District Court. In this regard, it requested, inter alia, partial nullification of action against Carlos Castaño Gil, due to violation of his right to defense, against Julio Enrique Florez González, due to violation of his right to defense and for not having been individually identified, and against José Vicente Gutiérrez Giraldo, for violation against him of the principle of comprehensive investigation. Also, with regard to Juan Manuel Ortiz Matamoros, it argued lack of competence to issue a ruling, since he was accused of the crime of falsifying a private document and, with regard to the conspiracy to commit a crime, it deemed that the substantive prerequisites were lacking. Likewise, it requested a modification of the provisional legal definition with regard to José Miller Ureña Díaz and Juan Carlos Gamarra Polo, as well as preclusion of the investigation in favor of Jorge Luis Almeira Quiroz, Helio Ernesto Buitrago León, and Juan Manuel Ortiz Matamoros. [FN85]

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[FN85] See the September 24, 1999 ruling by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 25, pages 3149, 3152, 3153 and 3155).

96.84 On April 13, 1999 the Attorney General's Office established that Lieutenant Colonel Lino Hernando Sánchez Prado, Commander of the 2d Mobile Brigade of the National Army, collaborated directly with the paramilitary group that acted in Mapiripán. Therefore, it decided:

[…] To order preventive detention, without the right to release from prison, against Lieutenant Colonel of the National Army Lino Hernando Sánchez Prado […] for his liability as an active participant in a conspiracy to commit a crime Art. 186 of the C.C., paragraph 3 and for being remiss regarding the crimes of aggravated homicide, aggravated kidnapping and terrorism […]
[…] The respective arrest warrant will be forwarded to the Commander of the military garrison where officer Sánchez Prado is to be found.
[…] To forbid Lieutenant Colonel Lino Hernando Sánchez Prado from leaving the country, in accordance with Article 395 of the Criminal Procedures Code […] [FN86]

[FN86] See April 13, 1999 ruling by the Office of the Attorney General (file with appendixes to the application, appendix 38, pages 535, 541 and 551), and statement by Hernán Orozco Castro, rendered before the Office of the Attorney General on March 25, 1999 (file with appendixes to the brief containing pleadings and motions, appendix 13, pages 3053, 3060 and 3069).

96.85 On April 20, 1999 the Attorney General's Office addressed the Regional Public Prosecutor in charge of the case and desisted from the appeal filed against the March 30, 1999 ruling that defined the legal situation of Lieutenant Colonel Hernán Orozco Castro (supra para. 96.80) since, in its opinion, the remiss conduct of said officer, regarding the facts that took place in Mapiripán, was under the jurisdiction of military criminal venue, which hindered continuation with procedural unity. Therefore, the Attorney General's Office asked the Regional Public Prosecutor's Office to generate a clash of jurisdiction. In this regard, it deemed that:

The facts narrated show that LC OROZCO CASTRO did not carry out his constitutional and legal functions of protecting the lives, honor and property of the persons residing in Colombia (Art. 2 para. 2 Pol. Const.); that he did not carry out acts that were required by his functions, as an active member of the Military Forces and acting Commander of the Joaquín París Battalion […]. [FN87]

[FN87] See the August 18, 1999 ruling by the High Council of the Judiciary (file with appendixes to the application, appendix 54, page 817).

96.86 On May 10, 1999 the Public Prosecutor's Office of the National Human Rights Unit decided not to reconsider any of the points of the April 7, 1999 ruling (supra para. 96.82).

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However, it granted the subsidiary appeal against that same decision in the effect of staying execution of the ruling (supra para. 96.83), and this was ratified by that same instance in the May 24, 1999 order and forwarded to the Deputy Public Prosecutor's Office before the Tribunal Nacional, for its review. [FN88]

[FN88] See May 10, 1999 ruling by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the application, appendix 36, pages 526 and 527), and August 18, 1999 ruling by the High Council of the Judiciary (file with appendixes to the application, appendix 54, page 837).

96.87 On May 20, 1999 the National Human Rights Unit decided:

[…] To order the preventive detention of Brigadier General of the National Army in active service Jaime Humberto Uscátegui Ramírez for the crimes of homicide and aggravated kidnappings and falsifying a public document as reflected in the proceeding.
[…] To abstain from issuing an arrest warrant against Brigadier General of the National Army in active service Jaime Humberto Uscátegui Ramírez for the crimes of terrorism and conspiracy to commit a crime for which he was investigated.
[…] to ask the General Command of the National Army to suspend Brigadier General Jaime Humberto Uscátegui Ramírez. Once he has been suspended, a detention order will be sent to the Commander of the military garrison assigned as his detention center. [FN89]

[FN89] See May 20, 1999 decision by the Prosecutor's Office of the National Human Rights Unit (file with appendixes to the application, appendix 35, pages 497 and 517).

96.88 On May 31, 1999 the Public Prosecutor's Office asked the Regional Deputy Public Prosecutor's Office to remit the proceeding with regard to General Jaime Humberto Uscátegui Ramírez to military criminal venue. In this regard, it deemed that:

[…] Both perpetration by omission with regard to the crimes of homicide and aggravated kidnappings, and liability for the crime of falsifying a document, which the Public Prosecutor's Office attributes to Jaime Humberto Uscátegui Ramírez, have to do with the Officer's service as a member of the security forces; therefore, in light of Article 221 of the Political Constitution, his prosecution must take place under Military Criminal Justice, for which reason the Public Prosecutor's Office asks the Regional Public Prosecutor of the National Human Rights Unit in charge of the instant investigation, to generate negative clash over jurisdiction before the Commander of the fourth Brigade of the National Army, arts. 97 and ff. of the P.C. to hear the alleged punishable acts possibly committed by a member of the Security Forces while in active service, in connection with that same Service. [FN90]

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[FN90] See ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, pages 811 and 818).

96.89 The Regional Public Prosecutor's Office for Human Rights denied the requests filed by the Public Prosecutor's Office with regard to remitting the proceedings to military criminal justice. Therefore, on May 12, 1999 the Public Prosecutor's Office asked the Commander of the Fourth Division of the National Army to request from regular criminal justice the criminal investigation against Hernán Orozco Castro and Juan Humberto Uscátegui Ramírez, at the same time generating a positive clash of jurisdiction. [FN91]

[FN91] See ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, page 819).

Jurisdictional clash between military criminal venue and regular criminal venue and other actions in the latter

96.90 On June 2, 1999 the Army Command, acting as a military trial court, invoked before the National Human Rights Unit of the Office of the Attorney General a positive clash of jurisdiction for the case to be remitted to military venue, deeming that the facts regarding which there were accusations against non-commissioned officers José Miller Ureña Díaz and Juan Carlos Gamarra Polo and officers Brigadier General Jaime Humberto Uscátegui Ramírez, Colonel Lino Hernando Sánchez Prado, commander of the 2d Mobile Brigade, and Lieutenant Colonel Hernán Orozco Castro, acting commander of the "Joaquín París" battalion, should be investigated and heard by a military criminal court. In this regard, it argued that:

[…] The accusations against military staff in the proceedings undertaken by the National Human Rights Unit of the Office of the Attorney General originated in Military Criminal Justice itself, when an investigative proceeding was opened by the Eleventh Military Criminal Trial Court attached to the Joaquín París Battalion. […]
[…] the criminal proceeding must be conducted with all due guarantees for the accused, based on the firm premise that the remiss conduct attributed to the military derives unequivocally from the duties of their military function, from preeminent constitutional and legal mandates, and in our criminal law, all remiss functions of a military must be directly and closely related to their military service role. This is the essence of the primary reason for military jurisdiction. [FN92]

[FN92] See positive clash of jurisdiction invoked by the Commander of the Army before the Human Rights Unit of the Prosecutor's Office June 2, 1999 (file with appendixes to the application, appendix 52, pages 791, 792, 795 a, g, s, v and xx).

96.91 On June 21, 1999 the Human Rights Unit of the Office of the Attorney General decided:

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FIRST: NOT TO ACCEPT the reasons given by the Commander of the National Army as Military Criminal Trial Judge, to hear the criminal investigation on the facts known as the "Mapiripán Massacre", against Brigadier General Jaime Humberto Uscátegui Ramírez, Colonel Lino Hernando Sánchez Prado, Lieutenant Colonel Hernán Orozco Castro, Sergeant José Miller Ureña Diaz and Sergeant Juan Carlos Gamarra Polo.
SECOND: TO ORDER that the case file against the aforementioned officers and non-commissioned officers be remitted to the H. High Council of the Judiciary -Disciplinary Jurisdictional Chamber- [FN93].

[FN93] See June 21, 1999 decision by the Office of the Attorney General (file with appendixes to the application brief, appendix 53, page 810).

96.92 On August 18, 1999, after an incidental plea regarding impediment, the High Council of the Judiciary decided that the criminal investigation against Brigadier General Jaime Humberto Uscátegui Ramírez and against Lieutenant Colonel Hernán Orozco Castro for the crimes of homicide, aggravated kidnappings and falsifying a public document, allegedly attributed to them, and for the crimes of terrorism and conspiracy to commit a crime, regarding which they were investigated, would be heard by a military criminal court. In this regard, it deemed that

[…] given the existence of active service by Brigadier General Jaime Humberto Uscátegui Ramírez there is undoubtedly a link between that service and the crimes that he allegedly committed, by omission and by action, as he could only allegedly commit them while exercising his functions.
[…] the conduct in which Lieutenant Colonel Hernán Orozco Castro allegedly incurred constitutes an omission regarding his functions, since being under the Commander of the Joaquín París Battalion, when he learned of the facts that were taking place in the town of Mapiripán, he did not carry out his constitutional and legal functions of protecting the lives, honor and property of the inhabitants, which he had the obligation to carry out under the military jurisdiction, and this gives rise to the link between the service he provided and the lack of consistent action regarding the information he received over the telephone, from which he learned of the criminal acts that were being committed in that town, for which reason this investigation will be heard by Military Criminal Justice, where it will be remitted for this purpose.
The High Council of the Judiciary also decided that the criminal investigation against Colonel Lino Hernando Sánchez Prado, Sergeant Juan Carlos Gamarra Polo and Sergeant José Miller Ureña Díaz, would be heard by a regular criminal court, represented by the Deputy Regional Public Prosecutor of the National Human Rights Unit. In this regard it deemed that
[…] there is evidence against Officer Lino Hernando Sánchez Prado, such as statements and indicia that would indicate that he allegedly sponsored the armed groups outside the law, who arrived at the town of Mapiripán, to commit various crimes, for which reason he was charged with actions amounting to conspiracy to commit a crime, an activity which clearly constitutes a breach of the link with his service role, as said activity was foreign to his military functions, and was carried out since before the facts that took place in Mapiripán, for the effectiveness of which, allegedly being able to avoid said facts, he did not carry out his duty, and only arrived at that place on the 21st, which according to the Public Prosecutor's Office enabled "the death

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squad to freely kill, kidnap, terrorize the population, establish its law, and only after they had completed their mortal task did the security forces headed by LC Lino Sánchez arrive", so this improper remiss assistance is not linked either to his service role, as it is obvious from the considerations that this officer was fully aware of what was going to happen, for which reason he was remiss to thus allow the events to take place against the lives, individual liberty, and public security.

[…] according to the allegations against officer Lino Hernando Sánchez Prado, these are not based on military jurisdiction, given the lack of a link between providing the military service and the criminal conduct attributed to him.

The investigation provides evidence against National Army Sergeants Juan Carlos Gamarra Polo and José Miller Ureña Díaz regarding their alleged participation in the facts that took place in the town of Mapiripán […] given the fact that they were stationed at the San José de Guaviare base, one of them in intelligence and the other at the military base at the airport of San José de Guaviare, which enabled them to have first hand knowledge of what happened, and they nevertheless did not carry out the duties pertaining to their functions, allegedly with the aim of allowing the punishable conduct that took place with their collaboration.

There is obviously no link between the unlawful conduct allegedly committed by National Army Sergeants Juan Carlos Gamarra Polo and José Miller Ureña Díaz and the service they provided as military, since their actions and omissions were seemingly agreed upon beforehand, they behaved as private individuals, thus eliminating the link with their official function, for which reason […] the investigation must be heard by Regular Criminal Justice. [FN94]

[FN94] See ruling of August 18, 1999 issued by the High Council of the Judiciary (file with appendixes to the application, appendix 54, pages 811 to 839).

96.93 On September 24, 1999 the Special Chamber to expedite proceedings of the Deputy Public Prosecutor's Office before the High Court of the Judicial District of Santafé de Bogotá, in response to the appeal filed by the Public Prosecutor's Office against the April 7, 1999 decision by the National Human Rights Unit (supra para. 96.83), decided:

FIRST: TO PARTIALLY REVOKE operative paragraph 7 [with regard to the accusation against Jorge Luis Almeira Quiroz] of the April 7, 1999 decision, regarding the charge of disparate treatment against Captain Jorge Luis Almeira.

SECOND: TO UPHOLD the April 7, 1999 decision brought before it for review…] [FN95]

[FN95] See September 24, 1999 decision by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 25, pages 3149, 3199 and 3199 bis).

96.94 On September 28, 1999 the Attorney General's Office decided to abstain from ordering the detention of First corporal Leonardo Montoya Rubiano. The Public Prosecutor's Office filed an appeal against said decision. [FN96]

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[FN96] See December 31, 1999 decision by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 16, page 3093).

96.95 On November 16, 1999 the Attorney General's Office decided to file charges against Lieutenant Colonel Lino Hernando Sánchez Prado for his possible liability as an active participant in the crime of conspiracy to commit a crime and by omission, with regard to the crimes of aggravated homicide, aggravated kidnapping and terrorism. Lino Hernando Sánchez Prado filed an appeal against said decision and the Public Prosecutor's Office filed an appeal for reconsideration subsidiary to the appeal against that decision, which was upheld by the Special Chamber to expedite proceedings of the Deputy Public Prosecutor's Office before the High Court of the Judicial District of Santafé de Bogotá on April 12, 2000, with a modification regarding the form of conduct as co-author by action and not by omission, as stated in the decision on the definition of the crime. [FN97]

[FN97] See December 31, 1999 decision by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 16, pages 3093 and 3094), and April 12, 2000 order, issued by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the application, appendix 2, pages 52 and 53).

96.96 On December 31,1999 the Attorney General's Office remitted

[…] the proceeding […] for the second time for the following appeals to be made effective: Appeal granted with a devolutive effect, filed by the Agent of the Public Prosecutor's Office, against the September 28, 1999 decision, in which that office abstained from ordering the detention of first corporal Leonardo Montoya Rubiano […]; subsidiary appeal for reconsideration, granted in its suspensive effect, filed by the Agent of the Public Prosecutor's Office against the decision dated November 16, 1999, which partially defined the merits of the preliminary proceedings with a decision to file charges against L.C. Lino Hernando Sánchez Prado […] and the appeal, granted in its suspensive effect, filed by Doctor Henry Palacios Salazar and Lino Hernando Sánchez Prado, against the decision dated November 16, 1999 […]. [FN98]

[FN98] See December 31, 1999 decision by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 16, pages 3093 and 3094).

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96.97 On April 12, 2000 the Deputy Public Prosecutor's Office before the High Court of the Judicial District upheld the decision regarding the merits of the preliminary proceedings with regard to Lino Hernando Sánchez Prado, and the September 28, 1999 decision in which the Attorney General's Office abstained from ordering the detention of Leonardo Montoya Rubiano (supra para. 96.94). That decision identified as victims in Mapiripán José Ronal Valencia, Sinaí Blanco aka "Catumare", Agustín N. Cotero and an unidentified person listed as "NN". It added that "unfortunately there are apparently many more missing than those on whom there is information," and at the site called La Cooperativa Álvaro Tovar Morales, Jaime Pinzón, and Raúl Morales were found dead. [FN99]

[FN99] See April 12, 2000 order, issued by the Deputy Prosecutor's Office before the High Court of the Court Circuit of Santafé de Bogotá (file with appendixes to the application, appendix 2, pages 52, 66, 78 and 79).

Military criminal jurisdiction

96.98 On February 12, 2001 Brigadier General (r) Jaime Humberto Uscátegui Ramírez was convicted by the High Military Court to 40 months in prison, a fine equivalent to 60 minimum monthly wages, loss of rights pertaining to exercise of public office due to the crime of malfeasance of public office by omission, suspension of patria potestas for the same time as the main sentence applied to him, and absolute separation from the military forces. Said Court also decided:

[…] to acquit him of the crime of falsifying a document during the exercise of his functions [;] ordered the proceeding against him to cease [in his favor] for the crimes of homicide and aggravated kidnappings, terrorism and conspiracy to commit a crime […] due to lack of merit to order a court martial […].
To revoke paragraph one of the May 20, 1999 decision […] in which the Human Rights Unit of the Office of the Attorney General ordered his arrest […] for the crimes of homicide and aggravated kidnappings and for falsifying a document while exercising his functions. [FN100]

[FN100] See February 12, 2001 report issued by the Special Trial Court of the War Tribunal of the Armed Forces of Colombia Bogotá (file with appendixes to the application, appendix 48, pages 778 and 779), and Judgment of February 12, 2001, issued by the Special Trial Court of the War Tribunal of the Armed Forces of Colombia Bogotá (file with evidence to facilitate adjudication submitted by the representatives).

96.99 On February 12, 2001 Lieutenant Colonel Hernán Orozco Castro was convicted by the High Military Court to 38 months in prison, to a fine equivalent to 55 current legal minimum monthly wages, and collaterally to loss of rights pertaining to exercise of public office, suspension of patria potestas for the same time as the main sentence applied to him and absolute separation from the military forces due to the crime of malfeasance of public office by omission.

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He was also acquitted of the crime of falsifying a document while exercising his functions and all proceedings against him ceased regarding the crimes of multiple homicide, aggravated kidnapping, terrorism, conspiracy to commit a crime and violation of Decree 1194 of 1989 [FN101].

[FN101] See February 12, 2001 report, issued by the Special Trial Court of the War Tribunal of the Armed Forces of Colombia Bogotá (file with appendixes to the application, appendix 48, pages 778 and 779), and Judgment of February 12, 2001, issued by the Special Trial Court of the War Tribunal of the Armed Forces of Colombia Bogotá (file with evidence to facilitate adjudication submitted by the representatives).

96.100 Subsequently, Lieutenant Colonel Hernán Orozco Castro filed a request for release on bail. On March 16, 2001 the High Military Court found that the case of Lieutenant Colonel Hernán Orozco Castro "d[id] not meet the requirements to conditionally suspend execution of the judgment [as he requested], given the punitive quantum foreseen in the provision breached, which was not alleged during the procedural stage and there is even less reason to do so now if the accused is subject to a first grade conviction which sentences him to 38 months in prison." Therefore, said Court decided "NOT TO GRANT the request for release on bail filed by LC Hernán Orozco Castro […]." [FN102]

[FN102] See March 16, 2001 ruling by the High Military Court (file with appendixes to the application, appendix 49, pages 781, 783 and 784).

96.101 On May 22, 2001 the High Military Court accepted "the impediment stated by General Fernando Tapias Stahelin, General Commander of the Military Forces, with regard to his status as President of the High Military Court to hear the proceeding for the crime of malfeasance of public office by omission against BG. Humberto Uscátegui Ramírez and LC Hernán Orozco Castro […]" [FN103].

[FN103] See May 22, 2001 ruling by the High Military Court (file with appendixes to the application, appendix 50, pages 784 and 786).

96.102 On June 5, 2001 the High Military Court of the Military Forces of Colombia accepted the request for release on bail filed by General Jaime Humberto Uscátegui Ramírez and decided to release him. In this regard it deemed that the lower court's conviction of Brigadier Humberto Uscátegui Ramírez had not caused its material execution; that three fifths of the 40 month sentence is 24 months, which is the time he has been physically detained, in addition to which there is evidence of his good behavior while in prison and various types of background which enable the assumption of social reinsertion. Therefore, it decided:

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To recognize and take into account for purposes of the time of imprisonment of the accused BG (r) Humberto Uscátegui Ramírez, EIGHT (8) months, one (1) day for the time worked during his incarceration.
[…] to grant [BG (r) Humberto Uscátegui Ramírez] release on bail, after depositing bail equivalent to one monthly legal minimum wage […] and warn him that it only applies insofar as he is not accused of a different matter by judicial authorities. [FN104]

[FN104] See June 5, 2001 ruling by the High Military Court (file with appendixes to the application, appendix 51, pages 789 and 790).

Amparo remedy to solve the clash over jurisdiction between military criminal venue and regular criminal venue

96.103 On September 30, 1999, Nory Giraldo de Jaramillo, spouse of victim Sinaí Blanco Santamaría and a civil party to the proceeding, at that time represented by Luis Guillermo Pérez, filed an action for the protection of basic rights against the August 18, 1999 ruling of the Disciplinary Chamber of the High Council of the Judiciary (supra para. 96.92). [FN105]

[FN105] See application filed before the High Court of Bogotá on December 9, 1999 by Nory Giraldo de Jaramillo (file with appendixes to the application, appendix 56, page 868), and October 15, 1999 ruling by the Criminal Chamber of the High Court of the Judicial District of Bogotá (file with appendixes to the application, appendix 57, page 912).

96.104 On October 15, 1999 the Criminal Chamber of the High Court of the District of Bogotá rejected the amparo remedy filed by Nory Giraldo de Jaramillo, deeming that "[her] basic rights ha[d] not been breached." It also decided that. "if [said] ruling is not challenged, the records will be remitted to the […] Constitutional Court for possible review" (infra para. 96.107). [FN106]

[FN106] See the October 15, 1999 ruling by the Criminal Chamber of the High Court of the Judicial District of Bogotá (file with appendixes to the application, appendix 57, pages 912 to 918).

96.105 On October 22, 1999, Nory Giraldo de Jaramillo appealed the October 15, 1999 ruling issued by the Criminal Chamber of the High Court of the District of Bogotá before the Criminal Chamber of the Supreme Court of Justice (supra para. 96.104). [FN107]

[FN107] See remedy to assert the appeal filed before the Criminal Chamber of the High Court of Bogotá on October 27, 1999 by Nory Giraldo de Jaramillo (file with appendixes to the application, appendix 58, pages 921 to 928).

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96.106 On December 9, 1999 the Criminal Appellate Chamber of the Supreme Court of Justice ruled on the appeal filed by Nory Giraldo de Jaramillo (supra para. 96.105), upholding the October 15, 1999 decision of the Criminal Chamber of the High Court of the District of Bogotá (supra para. 96.104). [FN108]

[FN108] See December 9, 1999 ruling, issued by the Criminal Appellate Court of the Supreme Court of Justice (file with appendixes to the application, appendix 59, pages 929 to 941).

96.107 On January 12, 2000 the General Secretariat of the Constitutional Court received from the Secretariat of the Criminal Appellate Chamber the amparo remedy filed by Nory Giraldo de Jaramillo, for its review (supra para. 96.104). [FN109]

[FN109] See application filed before the High Court of Bogotá on December 9, 1999 by Nory Giraldo de Jaramillo (file with appendixes to the application, appendix 56, page 867).

96.108 On November 13, 2001 the Criminal Chamber of the Constitutional Court issued a ruling in the review process of the decisions issued during the processing of the amparo remedy filed by Nory Giraldo de Jaramillo. In this regard it decided to grant, for disregard of the competent tribunal, protection of the basic right to due process and, therefore, it revoked the rulings issued by the Criminal Chamber of the High Court of the Judicial District of Bogotá on October 15, 1999 and by the Criminal Appellate Chamber of the Supreme Court of Justice on December 9, 1999 (supra paras. 96.104 and 96.106). It also declared the nullity of the August 18, 1999 decision (supra para. 96.92). Finally, it ordered the Disciplinary Jurisdictional Chamber of the High Council of the Judiciary to decide on the clash of jurisdiction within ten days of notification of said judgment. [FN110]

[FN110] See judgment SU-1184 of November 13, 2001, issued by the Full Court of the Constitutional Court (file with appendixes to the application, appendix 60, pages 943 and 1005).

96.109 On February 21, 2002 the Disciplinary Jurisdictional Chamber of the High Council of the Judiciary decided on the clash of jurisdiction, finding that the proceeding should be heard by regular criminal venue, represented by the Human Rights Unit of the Office of the Attorney General, where the records were to be sent immediately. [FN111]

[FN111] See February 21, 2002 ruling, issued by the High Council of the Judiciary (file with appendixes to the application, appendix 55, pages 841 and 857).

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Continuation of the proceeding before regular criminal jurisdiction, once the clash over jurisdiction had been solved

96.110 On June 28, 2002 the National Human Rights and International Humanitarian Law Unit declared the nullity of the decisions of the criminal military courts and the case was returned to regular criminal venue, without affecting the evidence tendered and the actions taken by said Unit. It also granted release on bail to Brigadier General Jaime Humberto Uscátegui Ramírez, "since the legal requirements set forth in Article 365 paragraphs 4 and 15 of the Criminal Procedures Code have been met." [FN112]

[FN112] See June 28, 2002 decision by the National Human Rights Unit (file with appendixes to the application, appendix 44, pages 755 and 766).

96.111 Subsequently, the agent for the civil party and defense counsel for Lieutenant Colonel Hernán Orozco Castro requested preclusion of the investigation against him, before the National Human Rights and International Humanitarian Law Unit. He also argued that Orozco Castro was being threatened, presumably by military. [FN113]

[FN113] See September 2, 2002 decision by the National Human Rights Unit (file with appendixes to the application, appendix 45, pages 767 to 769).

96.112 On September 2, 2002 the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General rejected the request for preclusion of the investigation in favor of the LC (r) Hernán Orozco Castro submitted by the agent for the civil party and by his contractual defense counsel (supra para. 96.111), based on non-fulfillment of the legal requirements set forth in Article 39 of the Criminal Procedures Code that establishes the generic grounds for preclusion of the investigation, as follows:

[t]hat the conduct has not existed, that the accused did not commit it, that the conduct is not in accordance with the definition of the crime, that grounds for non-liability have been proven, and that the action could not commence or cannot continue.

Said Unit also ordered that the matter be remitted to the Office for the Protection of Victims and Witnesses of the Public Prosecutor's Office, for it to report on the assessment regarding the protective measures to be taken, based on a risk-level assessment, with regard to Lieutenant Colonel (r) Hernán Orozco Castro, taking into account the facts noted.

Finally, the National Human Rights Unit established that

[since] one of the principles that regulate the criminal proceeding is that of procedural unity, according to which only one proceeding will be conducted to investigate and try each punishable

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fact, whatever the number of perpetrators or participants, as well as that when the punishable facts are connected to each other, and taking into account that this court was likewise hearing these criminal episodes, by means of case 784 UDH, it is necessary to join the current criminal proceedings for them to be conducted as part of one procedural string. [FN114]

[FN114] See September 2, 2002 decision by the National Human Rights Unit (file with appendixes to the application, appendix 45, pages 767 to 774).

96.113 On October 28, 2002 an arrest warrant was issued against Arnoldo Vergara Trespalacios, aka "Mochacabezas" or "Percherón", as the alleged co-perpetrator of the crimes of aggravated homicide, aggravated kidnapping for extortion, terrorism and conspiracy to commit the crimes of homicide, kidnapping for extortion and terrorism; against Francisco Enríquez Gómez Bergaño, as the alleged co-perpetrator of the crimes of aggravated homicide, aggravated kidnapping for extortion, terrorism and conspiracy to commit those crimes; and against Raúl Arango Duque, as the alleged perpetrator of the criminal hypothetical of conspiracy to commit the crimes of homicide, kidnapping for extortion and terrorism and abstaining from ordering the arrest of Raúl Arango Duque for the crimes of aggravated homicide, aggravated kidnapping for extortion, and terrorism. [FN115]

[FN115] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4992), and October 28, 2002 decision by the National Human Rights and International Humanitarian Law Unit (file with appendixes to the application, appendix 43, page 753).

96.114 On December 9, 2002 the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General, "given that the procedural requirements set forth in Article 393 of the Criminal Procedures Code were met, declar[ed] the […] investigative phase partially closed with regard to the accused Brigadier General (r) Jaime Humberto Uscátegui Ramírez, Lieutenant Colonel Hernán Orozco Castro and Miguel Enrique Vergara Salgado". [FN116]

[FN116] See December 9, 2002 decision by the National Human Rights and International Humanitarian Law Unit (file with appendixes to the application, appendix 46, page 755); report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4993).

96.115 On March 10, 2003 the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General decided:

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FIRST: To file charges against B[rigadier] G[eneral] (r) Jaime Humberto Uscátegui Ramírez […] as the alleged perpetrator, by improper omission, of the crimes of aggravated homicide and aggravated kidnapping […]
To revoke the release on bail [of Brigadier General (r) Jaime Humberto Uscátegui Ramírez] granted in the July 6, 2002 […]decision […] and for him to remain incarcerated.
SECOND: To file charges against B[rigadier] G[eneral] (r) Jaime Humberto Uscátegui Ramírez and LC (r) Hernán Orozco Castro […] the former as the alleged instigator and the latter as the alleged direct perpetrator of the punishable act of falsifying a public document […]
[…] the accused LC (r) Hermán Orozco Castro, while retaining his right to liberty, must sign a document of commitment.
THIRD: To preclude the investigation in favor of BG (r) Jaime Humberto Uscátegui Ramírez as the alleged perpetrator of the punishable act of Conspiracy to commit a crime and terrorism.
FOURTH: To preclude the investigation in favor of the LC (r) Hermán Orozco Castro as the alleged perpetrator of the crimes of Aggravated homicide, Aggravated kidnapping, Terrorism and conspiracy to commit a crime […]
FIFTH: To file charges against Miguel Enrique Vergara Salgado aka "Cepillo" […] as the alleged co-perpetrator of the crimes of aggravated homicide, aggravated kidnapping, terrorism, and conspiracy to commit a crime […]. Therefore, the arrest warrant is reiterated.
SIXTH: This decision being final, the proceeding will be remitted to the respective Criminal Court of the Specialized Circuit of Villavicencio, Meta, according to its distribution, for that court to continue the case. [FN117]

[FN117] See March 10, 2003 indictment, issued by the National Human Rights Unit (file with appendixes to the brief containing pleadings and motions, appendix 36, pages 3530 to 3568).

96.116 Therefore, the defense counsel for General (r) Jaime Humberto Uscátegui Ramírez, the agent for the civil party and the Special Agent of the Public Prosecutor's Office appealed the March 10, 2003 decision mentioned in the previous paragraph. [FN118]

[FN118] See July 30, 2003 order, issued by the Unit of the Deputy Public Prosecutor's Offices before the High Court of Bogotá (file with appendixes to the application, appendix 39, page 552).

96.117 On June 18, 2003 the Second Criminal Court of the Specialized Circuit of Bogotá decided:

First: To convict Carlos Castaño Gil, (r) Cr. Lino Hernando Sánchez Prado and Julio Enrique Florez, whose particulars are listed in this sentence, and as co-perpetrators of the conducts with which they have been formally charged; therefore, each of the accused is accordingly sentenced to forty (40) years in prison and additional punishment of loss of rights pertaining to public functions for twenty (20) years.

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Second: To convict, under the terms set forth, José Miller Ureña Díaz, whose particulars are listed in this sentence and as co-perpetrator […] by omission of the conducts with which he has been formally charged; therefore the accused is sentenced to thirty-two (32) years in prison and the additional punishment of loss of rights pertaining to public functions for twenty (20) years.
Third: Under the terms set forth, Juan Carlos Gamarra Polo, whose particulars are listed in this sentence and as punishable perpetrator of conspiracy to commit a crime and an accomplice to aggravated homicide, terrorism and kidnapping, is sentenced to twenty-two (22) years in prison and the additional punishment of loss of rights pertaining to public functions for twenty (20) years.
Fourth: To declare that the accused have no right to any benefit regarding release, in accordance [with] the aforementioned reasons.
Fifth: Under the terms set forth, Carlos Castaño Gil, Julio Enrique Flores González, Juan Carlos Gamarra Polo, José Miller Ureña Díaz, Lino Hernando Sánchez Prado must pay damages due to the violations of the right to humane treatment in accordance [with] the content of the Whereas clauses of this judgment.
Sixth: To acquit Helio Ernesto Buitrago in accordance with what has been noted, for which reason he will be given the benefit of release set forth in Article 365-3 of the CCP, after personal cognizance and signing a document of commitment […] [FN119].

[FN119] See June 18, 2003 conviction, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the application, appendix 4, pages 115, 156 a) to c)).

96.118 On July 7, 11 and 22, 2003 Carlos Castaño Gil, Julio Enrique Florez González, Juan Carlos Gamarra Polo and José Miller Urueña Díaz filed appeals before the High Court of Bogotá against the June 18, 2003 judgment (supra para. 96.117). [FN120]

[FN120] See appeals filed on July 7, 11 and 22, 2003 by Carlos Castaño Gil, Julio Enrique Florez González, Juan Carlos Gamarra Polo and José Miller Ureña Díaz, before the High Court of Bogotá (file with evidence to facilitate adjudication submitted by the representatives).

96.119 On July 30, 2003 the Unit of the Deputy Public Prosecutors' Offices before the High Court of Bogotá decided:

First: To revoke point four of the decision [of March 10, 2003] and instead to file charges against retired Colonel Hernán Orozco Castro, allegedly liable, by improper omission, of the crimes of aggravated homicide in successive conspiracy, and concurrence of several culpable crimes with aggravated kidnapping, as stated in the instant decision.
Second: To therefore order the preventive detention of Hernán Orozco Castro […] whose civil and personal particulars are known in this proceeding, issuing the respective arrest warrant.
Third: With the clarifications made before, to uphold in all its parts the other points of the challenged decision.

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Fourth: The point on "Other rulings" must be carried out." [It is necessary given the magnitude of the facts investigated, to attain clarity regarding all the participants in those events; therefore, orders will be forwarded to investigate the possible liability of civil, military and police authorities, in the municipalities of Apartadó and Neclocí in the Department of Antioquia, the locations or corregimientos of Charras, Barrancón, La Cooperativa, the municipality of Mapiripán, San José del Guaviare and all the route covered by the members of the Autodefensas Unidas of Colombia, who carried out this macabre act, in addition to investigating the civilians who assisted in the execution of this massacre …]. [FN121]

[FN121] See July 30, 2003 order, issued by the Unit of the Deputy Public Prosecutors' Offices before the High Court of Bogotá (file with appendixes to the application, appendix 39, pages 592 and 593).

96.120 On September 30, 2003 the Second Criminal Court of the Specialized Circuit of Bogotá decided:

FIRST: To convict Luis Hernando Méndez Bedoya aka René Cárdenas Galeano […] as co-perpetrator of […] aggravated homicide, kidnapping, terrorism and conspiracy to commit a crime, sentencing him to forty (40) years in prison.
SECOND: To convict Luis Hernando Méndez Bedoya aka René Cárdenas Galeano to the additional punishment of loss of rights pertaining to public functions for twenty (20) years.
THIRD: To convict José Vicente Gutiérrez Giraldo, to the main sentence of one hundred and twenty-five (125) months in prison and a fine of ten thousand (10,000) current legal minimum monthly wages, as co-perpetrator of the crime then described in Article 2 of Decree 1194 of 1989, now reflected in Article 340 of the CC, paragraph 2, as stated in this decision.
FOURTH: To convict José Vicente Gutiérrez Giraldo to the additional punishment of loss of public functions and rights for the duration of the main sentence.
FIFTH: Not to grant the accused Luis Hernando Méndez Bedoya and José Vicente Gutiérrez Giraldo, the benefit of suspended execution.
SIXTH: To grant José Vicente Gutiérrez Giraldo, the benefit of release on bail […] after depositing bail equivalent to five (5) current legal minimum monthly wages in favor of this court, and signing a document of commitment; this release will be effective insofar as the accused is not sought by any other judicial authority.
SEVENTH: To convict Luis Hernando Méndez Bedoya, TO PAY in favor of each of the families of the victims […] Ronal Valencia, Sinaí Blanco, Antonio María Barrera, Agustín N, Álvaro Tovar Morales, Jaime Pinzón [and] Raúl Morales, as those entitled to the compensation, an amount equivalent to two hundred (200) current legal minimum monthly wages.
EIGHT: To not convict José Vicente Gutiérrez Giraldo to payment of any compensation […] [FN122]

[FN122] See conviction of September 30, 2003, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the brief containing pleadings and motions, appendix 34, pages 3463 to 3523).

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96.121 On January 15, 2004 Lino Hernando Sánchez Prado filed an addition to the appeal and request to declare an impediment, filed against the June 18, 2003 judgment (supra paras. 96.117). [FN123]

[FN123] See addition to the basis for the appeal filed on January 15, 2004 by Lino Hernando Sánchez Prado against the June 18, 2003 conviction, before the High Court of the Court District of Bogotá (file with evidence to facilitate adjudication submitted by the representatives).

96.122 On February 15, 2005 the Criminal Chamber of the High Court of the Judicial District of Bogotá decided:

1º. TO REVOKE points 1, 3, 4 and 5 of the operative part of the September 30, 2003 judgment, regarding the conviction of JOSÉ VICENTE GUTIÉRREZ GIRALDO, and instead to ACQUIT him of the facts regarding which charges were filed against him.
2º. TO CANCEL the bond deposited by Gutiérrez Giraldo when he was released on bail.
3º. TO UPHOLD the conviction against CARLOS CASTAÑO GIL, JULIO ENRIQUE FLOREZ GONZÁLEZ, LINO HERNANDO SÁNCHEZ PRADO, JUAN CARLOS GAMARRA POLO and José MILLER UREÑA DÍAZ, regarding the subject matter of the appeal.
4º. To reiterate the arrest warrants against CARLOS CASTAÑO GIL and LUIS HERNANDO MÉNDEZ BEDOYA or RENÉ CÁRDENAS GALEANO (a. René), and the a quo or the Criminal Sentence and Security Measures Execution Judge must verify whether there is an investigation for the crime of flight, as set forth in a certification left at the time of notification of his conviction by the trial court; if that were not the case, to proceed accordingly. [FN124]

[FN124] See Judgment of February 15, 2005 issued by the Criminal Chamber of the High Court of the Court District of Bogotá (file with evidence tendered by the State, pages 4692 to 4771).

96.123 On March 25, 2003 the National Human Rights and International Humanitarian Law Unit reported that

while the number of victims has not been established, it has been possible to identify in the forensic records the bodies of José Rolan Valencia, Sinaí Blanco and an unidentified man approximately […] 35 to 40 years old, there being a certification of removal of the bodies […] and autopsy certificates […]. In addition to the three aforementioned bodies, other townspeople [were] murdered[, and their bodies] were thrown into the Guaviare River, such as [those of] Antonio María Barrera, Álvaro Tovar Muñoz, known as Tomate, Edwin Morales, Jaime Pinzón, that of a young black man named Nelson and that of a man whose body was found floating in the water, without it having been identified as yet; [there was also] the kidnapping of Gustavo Caicedo Rodríguez, Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras

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and Manuel Arévalo, murders and disappearances regarding which there are […] witnesses. [FN125]

[FN125] See the March 25, 2003 note, signed by a judicial technical expert of the Human rights and International Humanitarian Law Unit (file with appendixes to the application, appendix 47, pages 776 and 777).

96.124 On December 31, 2004 the Attorney General's Office, through the Directorate of International Affairs, in response to a request by the Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit, requested "international technical assistance from the authorities of the London Metropolitan Police, to attempt the possible recovery of certain bones of people killed in the Mapiripán Massacre, with a team of forensic experts specializing in management of underwater scenes." [FN126]

[FN126] See the December 31, 2004 note, signed by the Director of International Affairs of the Office of the Attorney General, addressed to the Commissioner of the London Metropolitan Police (file with evidence tendered by the State, page 4687).

96.125 On July 11, 2005 the public hearing in the trial against General (r) Jaime Humberto Uscátegui was completed and the proceeding moved to the office of the criminal judge of the specialized circuit for him to issue the respective judgment. [FN127]

[FN127] See brief with evidence to facilitate adjudication of the case submitted by the State on September 2, 2005.

96.126 At the time of the instant Judgment, the criminal proceeding is still ongoing and its current state, according to the information in the file before the Court, is the following:

a) an approximate of 17 individuals have been prosecuted;
b) charges have been filed against thirteen accused persons, five of whom are members of the Army (supra note 96.82, 96.95, 96.115 and 96.119);
c) the Attorney General's Office has ordered nine preventive detention measures. Of these, the arrest warrants against Arnoldo Vergara Trespalacios, Francisco Gómez Vergaño and Miguel Enrique Vergara Salgado, alleged paramilitary, have not been effective;
d) there are two first-instance convictions against seven individuals, namely the paramilitary Carlos Castaño, Julio Enrique Flórez, Luis Hernando Méndez Bedoya and José Vicente Gutiérrez Giraldo, Sergeants José Miller Ureña Díaz and Juan Carlos Gamarra Polo, and Lieutenant Colonel Lino Hernando Sánchez Prado (supra paras. 96.117 and 96.120). There is an appellate sentence that acquitted José Vicente Gutiérrez Giraldo and upheld the previous conviction against Carlos Castaño, Julio Flórez, Sergeants José Miller Ureña Díaz and Juan

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Carlos Gamarra Polo, and Lieutenant Colonel Lino Hernando Sánchez Prado (supra para. 96.122);

e) of these seven convictions to sentences involving imprisonment, there are at least two arrest warrants pending execution, namely those issued against the paramilitary Carlos Castaño Gil and Luis Hernando Méndez Bedolla. However, according to information supplied by the State, the arrest warrant issued against Carlos Castaño Gil is suspended; [FN128] and

g) on August 3, 2005 the National Unit of Public Prosecutors' Offices ordered that Salvatore Mancuso Gómez be formally joined to the proceeding. However, on August 4, 2005 said Unit stated that "given his status as a representative member of the 'Autodefensas Unidas of Colombia' in the ongoing peace process and the demobilization and reinsertion into civilian life of the men under his command, its suspension was ordered in accordance with subparagraph two of paragraph two of Article 3 of Law 782 of 2002. However, to ensure the appearance of Mancuso Gómez during the investigation, the High Commissioner for Peace [was] ask[ed] to report on his place of residence or location, for him […] to be heard during the investigative phase." On August 3, 2005 an arrest warrant was also issued against José Pastor Gaitán Ávila, as the alleged co-perpetrator of the crimes of homicide in combination with the punishable acts of kidnapping, terrorism and conspiracy to commit a crime. [FN129]

[FN128] See report prepared by the Office of the Attorney General on April 6, 2005 (file with appendixes to the final pleadings submitted by the State, page 4986).

[FN129] See August 3, 2005 decision by the National Human Rights and International Humanitarian Law Unit; August 4, 2005 note, signed by a Specialized Prosecutor of the Office of the Attorney General, addressed to the High Commissioner for Peace (file with evidence to facilitate adjudication submitted by the representatives).

Administrative-law proceedings

a) Next of kin of Álvaro Tovar Muñoz and José Rolan Valencia

96.127 In October 1998 Beatriz Rojas Vargas and her daughter, minor Yulieth Lorena Tovar Rojas; Ernesto Tovar Muñoz; Marina Sanmiguel Duarte, in her name and representing her children, minors Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber Valencia Sanmiguel; Ligia Tovar de Ossa, Ernesto Tovar Loaiza, María Teresa Pérez Carrillo, in her name and representing her children, minors Sandra Milena Tovar Pérez and Adriana Tovar Pérez, Edelmira Tovar Muñoz and Fatty Tovar Muñoz, filed before the Administrative Law Court of Meta, Villavicencio, an application in which they requested that

[t]he Colombian State –Ministry of Defense (Security Forces) National Army and National Police be found severally, administratively responsible for the deaths of Álvaro Tovar Muñoz and José Roland Valencia, killed by paramilitary in the jurisdiction of the municipality of Mapiripán, Meta, in facts that took place on July 19, 1997 and therefore for all the subjective moral and material damages caused to Beatriz Rojas Vargas and Julieth Lorena Tovar Rojas (spouse and daughter of the deceased Álvaro Tovar Muñoz); Ernesto Tovar Loaiza and María Teresa Pérez Carrillo (father and adoptive mother, respectively), Ernesto Tovar Muñoz, Fatty

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Tovar Muñoz and Edelmira Tovar Muñoz (siblings of victim Álvaro Tovar Muñoz), Marina Sanmiguel Duarte, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber Valencia Sanmiguel (spouse and children respectively of José Rolan Valencia) [FN130].

[FN130] See application filed on October 24, 1998 by Beatriz Rojas Vargas et al., before the Administrative Law Court of Meta (file with appendixes to the brief containing pleadings and motions, appendix 33, pages 3421 to 3423).

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b) Next of kin of Sinaí Blanco Santamaría and Néstor Orlando Florez Escucha

96.128 On July 19, 1999 Blanca Lilia Ardila Castaneda, Yudi Sirley Blanco Ardila, Arbey Blanco Ardila, María Isabel Blanco Ortiz, Lilia Aurora Moreno Novoa, acting on their own behalf and representing their son, minor Juan Carlos Florez Moreno; Adela Aydé Florez Moreno; Néstor Fernando Florez Moreno; Orlando Albeiro Florez Moreno, filed before the Administrative Law Court of Meta, Villavicencio, an application in which they requested that:

[t]he Colombian State –Ministry of Defense (Security Forces) National Army and National Police be found severally, administratively responsible for the death of Sinaí Blanco Santamaría and the disappearance of Néstor Orlando Florez Escucha carried out by paramilitary with the participation of certain members of the National Army in active service […] in the jurisdiction of the Municipality of Mapiripán, Meta, according to events that took place on July 20 and 16, 1997, respectively, and therefore for all the successive material and subjective moral damages caused to Blanca Lilia Ardila Castañeda, Yudi Sirley Blanco Ardila, Arbey Blanco Ardila and María Isabel Blanco Ortiz, spouse and children respectively of victim Sinaí Blanco Santamaría. Likewise to Lilia Aurora Moreno Novoa, Juan Carlos Florez Moreno, Adela Ayde Florez Moreno, Néstor Fernando Florez Moreno and Orlando Albeiro Florez Moreno, spouse and children of missing person Néstor Orlando Florez Escucha. [FN131]

[FN131] See application filed on July 19, 1999 by Blanca Lilia Ardila Castañeda et al. before the Administrative Law Court of Meta (file with appendixes to the application, appendix 63, pages 1229 and 1230).

96.129 In July 1999 Nory Giraldo de Jaramillo, common-law spouse of Sinaí Blanco Santamaría, and her daughter Carmen Johanna Jaramillo Giraldo filed an application before the Administrative Law Court of Meta, in which they requested that

[t]he Colombian State –Ministry of Defense (Security Forces) National Army and National Police, Office of the Governor of the Guaviare, High Council of the Judiciary (Office of Judicial Administration) be found administratively responsible for all the damages, both pecuniary and non-pecuniary, to Nory Giraldo de Jaramillo and her daughter Carmen Johanna Jaramillo

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Giraldo for the violent death of her permanent companion Sinaí Blanco Santamaría that took place on July 19, 1997. [FN132]

[FN132] See application filed in July 1999 by Nory Giraldo de Jaramillo and her daughter Carmen Johanna Jaramillo Giraldo, before the Administrative Law Court of Meta (file with evidence to facilitate adjudication submitted by the State.)

96.130 On February 1, 2005, after the joining of the applications of October 1998 and of July 19, 1999 (supra paras. 96.127 and 96.128), the applicants and the Ministry of Defense of the National Army reached a Total Conciliatory Agreement "to recognize the non-pecuniary damages and compensate the pecuniary damages to the applicants." In this regard, they agreed on the following:

Moral damages:

For the death of Álvaro Tovar: to his spouse Beatriz Rojas Vargas eight hundred (800) gold grams. To Yulieth Lorena Tovar Rojas as daughter of the aforementioned deceased (800) gold grams. To Ernesto Tovar Muñoz as brother of the deceased four hundred (400) gold grams. For Ligia Tovar de Ossa as sister four hundred (400) gold grams. For Ernesto Tovar Loaiza who acted as father of the victim eight hundred (800) gold grams. For Fatty Tovar Muñoz as sister of the victim four hundred (400) gold grams. For Edelmira Tovar Muñoz as sister of the deceased four hundred (400) gold grams. For María Teresa Pérez Carrillo, as the person who raised him as a mother four hundred (400) gold grams. For Sandra Milena Tovar Pérez, who acted in this proceeding as sister of the deceased on the father's side, three hundred and twenty (320) gold grams. For Adriana Tovar Pérez, acting in this proceeding as sister of the deceased on the father's side, three hundred and twenty (320) gold grams).

For the death of José Roland Valencia: Marina Sanmiguel Duarte, who acted as spouse of the deceased eight hundred (800) gold grams. For Nadia Mariana Valencia Sanmiguel, as daughter of the deceased eight hundred (800) gold grams. For Yinda Adriana Valencia Sanmiguel, as daughter of the deceased eight hundred (800) gold grams. For Johanna Marina Valencia Sanmiguel, as daughter of the deceased eight hundred (800) gold grams. For Roland Andrés Valencia Sanmiguel, as son of the deceased eight hundred (800) gold grams. For Ronald Mayiber Valencia Sanmiguel, as daughter of the deceased eight hundred (800) gold grams.

Pecuniary damages:

For the death of Álvaro Tovar: The following amounts are offered. For Beatriz Rojas Vargas, as spouse of the deceased Álvaro Tovar Muñoz, thirty million seven hundred sixty-seven thousand two hundred pesos ($30,767,200). For Yulieth Lorena Tovar Rojas, who acted as daughter of the aforementioned deceased, eleven million seventy-nine thousand eight hundred pesos ($11,079,800).

For the death of José Rolan Valencia: The following amounts are offered as recognition of the pecuniary damages: For Marina Sanmiguel Duarte, as spouse of the deceased, twenty-eight million three hundred ten thousand pesos ($28,310,000). For Nadia Mariana Valencia Sanmiguel, as daughter of the deceased, one million four hundred and twenty-seven thousand pesos ($1,427,000). For Yinda Adriana Valencia Sanmiguel, as daughter of the deceased two million five hundred and ten thousand pesos ($2,510,000). For Johanna Marina Valencia

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Sanmiguel, as daughter of the deceased two million seven hundred ninety thousand pesos ($2,790,000). For Ronald Andrés Valencia Sanmiguel, as son of the deceased, three million six hundred thousand pesos ($3,600,000) and for Ronald Mayiber Valencia Sanmiguel, as son of the deceased, four million one hundred thousand pesos ($4,100,000).
Moral damages for the death of Sinaí Blanco Santamaría: To Blanca Lilia Ardila Castañeda, who appears in the proceeding as spouse of the deceased and taking into account that in the case for direct reparation brought by Nory Giraldo de Jaramillo before this same Court […] currently joined […] this lady claims the same damages as permanent companion, I offer four hundred (400) gold grams. For Yudi Sirley Blanco Ardila, as daughter of Sinaí Blanco Santamaría, eight hundred (800) gold grams. For Arbey Blanco Ardila, eight hundred (800) gold grams. For María Isabel Blanco, eight hundred (800) gold grams.
Pecuniary damages for the death of Sinaí Blanco Santamaría. As recognition of the pecuniary damages to Blanca Lilia Ardila Castañeda, who acted as spouse of the deceased and taking into account the aforementioned circumstance with regard to the cases brought by Nory Giraldo de Jaramillo, we offer five million five hundred eleven thousand pesos ($5,511,000). No offer is made to recognize pecuniary damages to the children of Sinaí Blanco because they were not claimed in the application. [FN133]

[FN133] See February 2005 ruling by the Administrative Tribunal of Meta (file with evidence tendered by the State, pages 4772 to 4780).

96.131 Subsequently, the Administrative Court of Meta approved the Total Conciliatory Agreement of February 1, 2005 (supra para. 96.130), which "leads to res judicata" and concluded said proceeding. It also accepted the waiver of the claims in the application filed by Lilia Aurora Moreno Novoa and her son, minor Juan Carlos Florez Moreno, Adela Aydé Florez Moreno and Néstor Fernando Florez Moreno and Orlando Albeiro Florez Moreno. [FN134]

[FN134] See February 2005 ruling by the Administrative Tribunal of Meta (file with evidence tendered by the State, pages 4772 to 4780).

96.132 Nory Giraldo de Jaramillo stated that she did not wish to reach a settlement regarding the settlement proposal made by the State. [FN135]

[FN135] Non-disputed fact.

Disciplinary Jurisdiction

96.133 A disciplinary proceeding with regard to the facts of July 1997 was opened before the Attorney General's Office against several members of the Armed Forces and public officials. The facts investigated, until then, were, that

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members of the 'Autodefensas Campesinas' entered the departments of Guaviare and Meta […and] killed Rolan or Ronal Valencia, Sinaí Blanco, an unidentified male and Pacho NN; they kidnapped Antonio María Barrera Calle and Nelson N.N., whose whereabouts are unknown. At the Inspección de La Cooperativa they murdered Álvaro Tovar Muñoz, Jaime Pinzón, N.N. Morales, a male, and Teresa N.N. and an as yet not established number of individuals whose bodies were apparently thrown into the Guaviare River; ten people died […] without the civil and military authorities intervening in a timely way or acting in accordance with their functions. [FN136]

[FN136] See disciplinary ruling of April 24, 2001 by the Deputy Public Prosecutor of the Nation (file with appendixes to the application, appendix 61, page 1007).

96.134 On April 24, 2001 the Deputy Attorney General decided:

FIRST: To disciplinarily punish Brigadier General (r) Jaime Humberto Uscátegui Ramírez as Commander of the Seventh Brigade of the National Army, at the time of the facts under investigation, with ABSOLUTE SEPARATION FROM THE MILITARY FORCES, for having incurred in the disciplinary misconducts set forth in Decree 85 de 1989, Article 65, Section C, paragraph a); Section F, paragraph a); and Article 184, paragraph g) […] [FN137]
SECOND: To disciplinarily punish with a SEVERE REPRIMAND Major (today Lieutenant Colonel) Hernán Orozco Castro, as acting Commander of Infantry Battalion No. 19 "Joaquín París" of the National Army, at the time of the facts under investigation, for having incurred in disciplinary misconduct […] set forth in Decree 85 of 1989, Article 65, Section C, paragraph a); Section F, paragraphs a) and i), in accordance with the considerations set forth in this decision.
THIRD: To disciplinarily punish with DISMISSAL Eduardo Brand Castillo, as Secretary of Government of the Department of Guaviare, at the time of the facts under investigation for having incurred in disciplinary misconduct […] As additional punishment he will be no allowed […] to exercise public functions for two (2) years […] as set forth in Law 200 of 1995, Article 25, number 3, in accordance with the considerations set forth in this decision.
FOURTH: […] TO ACQUIT Brigadier General Jaime Humberto Uscátegui Ramírez and Major Hernán Orozco Castro regarding the non-pursuit of the armed group that moved to the inspection of La Cooperativa, after the facts that took place in Mapiripán.
FIFTH: […] TO ACQUIT Jaime Calderón Moreno, as Municipal Mayor of Mapiripán at the time of the facts under investigation; Fernando Martínez Herrera, as Municipal Records Officer of the Civil Registry in Mapiripán; Luis Hernando Prieto Cárdenas, as Municipal Police Inspector in Mapiripán; César Augusto León Bermúdez, Municipal Representative and Juan Carlos López Pabón, Captain of the National Police. […]
SEVENTH: […] to disciplinarily investigate the facts pertaining to the complaint filed by Pilot Edmundo Schmitz Sicard […] in accordance with what was stated in the point regarding the conduct of officer Juan Carlos López Pabón.
EIGHT: To make attested copies for the Attorney General's Office and the Deputy Public Prosecutor's Office for the Military Forces to investigate the possible crime of perjury by Colonel Carlos Eduardo Ávila Beltrán. [FN138]

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[FN137] See Decree No. 85 of 1989 "Which amends the Rules of Procedure of the Disciplinary System of the Military Forces."
Article 65, Section C, "On negligence in command," paragraph a), for having eluded the responsibility inherent to his role as commander, because according to Articles 12 and 13 of those Rules of Procedure, "Whoever is assigned a command function is competent to issue orders" and these must be logical, timely, clear, precise, and concise, and in the case under examination, while he did issue orders, they were not timely to address the grave situation faced by the population of Mapiripán, and they were not logical because he knew that the Joaquín París Battalion did not have the means to address that situation.
Article 65, Section F, "Against the Service," paragraph a), for not having dutifully fulfilled the obligations and duties of the service, in a timely manner, because the military career demands a clear concept of fulfillment of duty, "devotion to the fatherland," a sense of responsibility, in accordance with Article 18 ibidem. […] i) for not having reported on the facts that he should have reported to his superior officers by rank or service.
Article 184, "Against Military Honor," paragraph g), for not entering into combat, when he could and should have done so, and not providing the necessary assistance, when he was able to.
Law No. 200 of 1995, "Which adopts the unified disciplinary code."
Article 25, paragraph 3 (also known as Article 25.3 of the Unified Disciplinary Code). Very gross misconduct includes: 3. Acting with manifest negligence in the investigation and punishment of disciplinary misconduct of the employees under him or in filing complaints regarding the punishable facts that he learns about while exercising his functions."
[FN138] See disciplinary ruling of April 24, 2001 issued by the Deputy Public Prosecutor of the Nation (file with appendixes to the application, appendix 61, pages 1006 and ff.)

96.135 On May 7, 2001 Brigadier General (r) Jaime Humberto Uscátegui Ramírez filed an appeal for reconsideration against the judgment of April 24, 2001. [FN139]

[FN139] See October 16, 2001 ruling, issued by the Attorney General's Office (file with appendixes to the reply to the application, appendix 1, pages 4420 and ff), and appeal for reconsideration filed on May 7, 2001 by Brigadier General (r) Jaime Humberto Uscátegui Ramírez (evidence to facilitate adjudication of the case submitted by the representatives).

96.136 On October 16, 2001 the Deputy Attorney General's Office ruled on the appeal for reconsideration by Brigadier General Jaime Humberto Uscátegui Ramírez and upheld the April 24, 2001 decision (supra para. 96.134). [FN140]

[FN140] See October 16, 2001 ruling, issued by the Attorney General's Office (file with appendixes to the reply to the application, appendix 1, pages 4420 and 4466).
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Specific facts in connection with the alleged victims and their next of kin

Sinaí Blanco Santamaría and his next of kin

96.137 Sinaí Blanco Santamaría was born on December 22, 1940 and he was 56 years old when he died. He was an independent gasoline merchant. [FN141]

[FN141] See death certificate of Sinaí Blanco Santamaría (file with appendixes to the brief containing pleadings and motions, appendix 56, page 4080); birth certificate of Sinaí Blanco Santamaría (file with appendixes to the brief containing pleadings and motions, appendix 55, page 4078), and statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4538).

96.138 Sinaí Blanco Santamaría was married to Blanca Lilia Ardila Castañeda for 25 years. Their children were Yudi Sirley Blanco Ardila, Arbey Blanco Ardila and María Isabel Blanco Ortiz. [FN142]

[FN142] See application filed on July 19, 1999 by Blanca Lilia Ardila Castañeda et al. before the Administrative Law Court of Meta (file with appendixes to the application, appendix 63, page 1230); Catholic marriage certificate of Blanca Lilia Ardila Castañeda and Sinaí Blanco Santamaría, and certificates before a notary public regarding the birth of María Isabel B. Ortiz, Arbey Blanco Ardila and Yudy SirLaw Blanco Ardila (evidence to facilitate adjudication of the case submitted by the representatives).

96.139 Nory Giraldo de Jaramillo was his common-law spouse for 5 years. Carmen Johanna Jaramillo Giraldo, daughter of Nory Giraldo de Jaramillo, was 16 years old at the time of the facts. [FN143]

[FN143] See statement by Nory Giraldo de Jaramillo, rendered before the Office of the Notary Public of the Circuit of Acacias, Meta, on December 4, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 56, page 4082), and birth certificate of Carmen Johanna Jaramillo Giraldo (file with appendixes to the brief containing requests, appendix 56, page 4081).

96.140 Nory Giraldo de Jaramillo and her daughter Carmen Johanna Jaramillo Giraldo were financially dependent on Sinaí Blanco Santamaría. When he died they suffered pecuniary losses. [FN144] Nory Giraldo de Jaramillo has worked as a seamstress and her daughter dropped out from school and has worked as a street vendor. [FN145]

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[FN144] See testimony of Nory Giraldo de Jaramillo rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statement by Nory Giraldo de Jaramillo, rendered before the Office of the Notary Public of the Circuit of Acacias, Meta, on December 4, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 56, page 4082).

[FN145] See statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4541), and statement by Nory Giraldo de Jaramillo, rendered before the Office of the Notary Public of the Circuit of Acacias, Meta, on December 4, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 56, page 4082).

96.141 Nory Giraldo de Jaramillo and her daughter Carmen Johanna Jaramillo Giraldo have been displaced several times, due to alleged threats by the paramilitary. [FN146] They have received support from the Red de Solidaridad, which gave them 10 million de pesos to buy a lot in Villavicencio. [FN147]

[FN146] See statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4541); testimony of Nory Giraldo de Jaramillo rendered before the Inter-American Court during the public hearing held on March 7, 2005, and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4600).

[FN147] See statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4541).

96.142 On February 1, 2005 Blanca Lilia Ardila Castañeda, Yudi Sirley Blanco Ardila, María Isabel Blanco Ortiz and Arbey Blanco Ardila signed a Full Conciliation Agreement with the Ministry of Defense, which was approved by the Administrative Law Court (supra paras. 96.130 and 96.131).

With regard to Antonio María Barrera Calle and his next of kin

96.143 Antonio María Barrera Calle, aka “Catumare”, was a merchant and a moneylender. His property included a farm, a residence called los “Tres Amigos”, a discotheque called “Salsa y Amor”, a ten ton boat, a 4 ton boat, a house and a storehouse. [FN148]

[FN148] See formal registration of documents before a notary public on June 28, 1989; bargain and sale document for business premises dated September 15, 1994, certified by a notary public on February 10, 1995; bargain and sale document for a discotheque on November 22, 1993, with

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signature recognition of the Municipality of Mapiripán, Department of Meta on that same date; (file with appendixes to the brief containing pleadings and motions, appendix 64, pages 4131 to 4143), December 4, 2003 note, addressed to the President of the Inter-American Court of Human Rights by Viviana Barrera Cruz, with signature recognition before a notary public on that same day (file with appendixes to the brief containing pleadings and motions, appendix 57, page 4085).

96.144 Antonio María Barrera Calle's next of kin were his daughter Viviana Barrera Cruz and her five children. Antonio María Barrera Calle's daughter and grandchildren were financially dependent on him, as well as on Mrs. Barrera's spouse. [FN149]

[FN149] See testimony of Viviana Barrera Cruz rendered before the Inter-American Court during the public hearing held on March 7, 2005, and December 4, 2003 note, addressed to the President of the Inter-American Court of Human Rights by Viviana Barrera Cruz, with signature recognition before a notary public on that same day (file with appendixes to the brief containing pleadings and motions, appendix 57, pages 4085 and 4086).

96.145 The paramilitary destroyed some property of Barrera Calle. At the time of Antonio María Barrera Calle's death, his daughter, Viviana Barrera Cruz, as well as her children, lived in Villavicencio. Currently she and her smaller children live in Mapiripán. Viviana Barrera Cruz's eldest son was threatened by paramilitary in Mapiripán, for which reason her mother had to send him away from the town. [FN150]

[FN150] See testimony of Viviana Barrera Cruz rendered before the Inter-American Court during the public hearing held on March 7, 2005, and December 4, 2003 note, addressed to the President of the Inter-American Court of Human Rights by Viviana Barrera Cruz, with signature recognition before a notary public on that same day (file with appendixes to the brief containing pleadings and motions, appendix 57, pages 4085 and 4086).

With regard to Jaime Riaño Colorado his next of kin

96.146 Jaime Riaño Colorado was a farmer. [FN151]

[FN151] See statement rendered as testimony before a notary public (affidavit) by Esther Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4518).

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96.147 Jaime Riaño Colorado was the common-law spouse of Luz Mery Pinzón López for several years. After the facts, she has suffered depression, changes in her personality, and health problems. [FN152]

[FN152] See statement rendered as testimony before a notary public (affidavit) by María Teresa Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4515), and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, pages 4581 and 4584).

With regard to siblings Enrique, Jorge, Luis Eduardo and José Alberto Pinzón López and their next of kin

96.148 Enrique Pinzón López was born on May 15, 1960 and he was 37 years old when he died. [FN153]

[FN153] See birth certificate of Enrique Pinzón López (file with appendixes to the brief containing pleadings and motions, appendix 59, page 4103).

96.149 Jorge Pinzón López was born on April 23, 1963 and he was 34 years old when he died. [FN154]

[FN154] See birth certificate of Jorge Pinzón López (file with appendixes to the brief containing pleadings and motions, appendix 59, page 4104).

96.150 Luis Eduardo Pinzón López was born on September 15, 1965 and he was 31 years old when he died. [FN155]

[FN155] See birth certificate of Luis Eduardo Pinzón López (file with appendixes to the brief containing pleadings and motions, appendix 59, page 4106).

96.151 José Alberto Pinzón López was born on May 8, 1967 and he was 30 years old when he died. [FN156]

[FN156] See birth certificate of Jorge Alberto Pinzón López (file with appendixes to the brief containing pleadings and motions, appendix 59, page 4108).

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96.152 Siblings Enrique, Jorge, Luis Eduardo and José Alberto Pinzón López were farmers and they managed a farm. The Pinzón López brothers were the main financial support of the family, aside from María Teresa Pinzón López. [FN157]

[FN157] See statements rendered as testimony before a notary public (affidavit) by María Teresa, Esther and Sara Paola Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4515, 4518, 4519 and 4522), and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4582).

96.153 The mother of siblings Enrique, Jorge, Luis Eduardo and José Alberto Pinzón López was Teresa López de Pinzón; their sisters were Luz Mery, Esther, Sara Paola and María Teresa Pinzón López. [FN158]

[FN158] See birth certificates of Luz Mery, María Teresa, Sara Paola and Esther, all of them Pinzón López (file with appendixes to the brief containing pleadings and motions, appendix 59, pages 4110 to 4116).

96.154 The Pinzón López brothers lived with their mother, their sister Luz Mery Pinzón López, her children and her common-law spouse, Jaime Riaño Colorado. [FN159]

[FN159] See testimony of Luz Mery Pinzón López rendered before the Inter-American Court during the public hearing held on March 7, 2005, and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, pages 4581 to 4590).

96.155 Luz Mery Pinzón López and her children have been displaced several times, due to the threats against them by the paramilitary. [FN160]

[FN160] See testimony of Luz Mery Pinzón López rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statement by Luz Mery Pinzón López, rendered before the Provincial Government Attorney's Office of Villavicencio, on March 30, 2001 (file with appendixes to the brief containing pleadings and motions, appendix 59, page 4123).

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96.156 Teresa López de Pinzón, the mother of the Pinzón López brothers, suffered a thrombosis in 1998, which paralyzed her face and half of her body. She underwent medical therapy and the medicine was expensive. López de Pinzón died in 2004, after two heart attacks. [FN161]

[FN161] See statements rendered as testimony before a notary public (affidavit) by María Teresa, Esther and Sara Paola Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4515, 4517, 4518 and 4521), and medical documents of Teresa López de Pinzón (file with appendixes to the brief containing pleadings and motions, appendix 69, pages 4181 to 4217).

96.157 Luz Mery Pinzón López received money from the State to buy a house. The State also helped them with part of the health care expenses of Teresa López de Pinzón. [FN162]

[FN162] See testimony of Luz Mery Pinzón López rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statement rendered as testimony before a notary public (affidavit) by Sara Paola Pinzón López on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4521).

With regard to Gustavo Caicedo Rodríguez and minors Diego Armando and Hugo Fernando Martínez Contreras and their next of kin

96.158 Gustavo Caicedo Rodríguez was a farmer and he worked on his own farm, where he lived with his family, with the exception of his stepdaughter, Yur Mary Herrera Contreras, who lived in Bogotá. He supported the whole family financially. [FN163]

[FN163] See statements rendered as testimony before a notary public (affidavit) by Yur Mar Herrera Contreras and Zuli Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4524, 4528 and 4529), and statement by Mariela Contreras Cruz, rendered before the 21st Notary Public's Office of the Circuit of Bogotá, on December 22, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 69, page 4177).

96.159 Gustavo Caicedo Rodríguez was the common-law spouse of Mariela Contreras Cruz for approximately 12 years. Their children were Maryuri and Gustavo Caicedo Contreras. His stepdaughters are Yur Mary and Zuli Herrera Contreras, and his stepsons were Rusbel Asdrúbal, Hugo Fernando and Diego Armando Martínez Contreras. [FN164]

[FN164] See statement rendered as testimony before a notary public (affidavit) by Yur Mar Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by

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a notary public, page 4524); birth certificates of Diego Armando Martínez Contreras, Hugo Fernando Martínez Contreras, Rusbel Asdrúbal Martínez Contreras, Gustavo Caicedo Contreras and Maryuri Caicedo Contreras; certificate of verification of kinship of Yur Mary Herrera Contreras; identification card of Zuli Herrera Contreras, and statement by Mariela Contreras Cruz, rendered before the 33d Notary Public's Office of the Circuit of Bogotá, on December 24, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 58, pages 4088 to 4100).

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96.160 Diego Armando Martínez Contreras was born on March 4, 1982 and he was 15 years old when he died. [FN165]

[FN165] See birth certificate of Diego Armando Martínez Contreras (file with appendixes to the brief containing pleadings and motions, appendix 58, page 4088).

96.161 Hugo Fernando Martínez Contreras was born on January 27, 1981 and he was 16 years old when he died. [FN166]

[FN166] See birth certificate of Hugo Fernando Martínez Contreras (file with appendixes to the brief containing pleadings and motions, appendix 58, page 4090).

96.162 The mother of siblings Diego Armando and Hugo Fernando Martínez Contreras is Mariela Contreras Cruz. Their siblings were Rúsbel Asdrúbal Martínez Contreras, Maryuri and Gustavo Caicedo Contreras, and Yur Mary and Zuli Herrera Contreras. [FN167]

[FN167] See birth certificates of Diego Armando and Hugo Fernando Martínez Contreras, Rúsbel Asdrúbal Martínez Contreras, Gustavo Caicedo Contreras and Maryuri Caicedo Contreras; certificate of verification of kinship of Yur Mary Herrera Contreras; citizen's identification card of Zuli Herrera Contreras (file with appendixes to the brief containing pleadings and motions, appendix 58, pages 4088 to 4097), and statement by Mariela Contreras Cruz, rendered before the 33d Notary Public's Office of the Circuit of Bogotá, on December 24, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 58, page 4100).

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96.163 The next of kin of Gustavo Caicedo Rodríguez and of minors Hugo Fernando and Diego Armando Martínez Contreras were displaced; they had to leave the land they had in Mapiripán,

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the livestock and the house with its furnishings; they went “from farm to farm” and then they went to Bogotá. At least twice they received some material support from the State, such as household necessities (two blankets, two pounds of peas and two of rice) and help to pay the rent. [FN168]

[FN168] See testimony of Mariela Contreras Cruz rendered before the Inter-American Court during the public hearing held on March 7, 2005; statements rendered as testimony before a notary public (affidavit) by Yur Mary and Zuli Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4525 and 4526, and 4529); sworn statements rendered by witness Maryuri Caicedo Contreras and by witness Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, pages 4570 and 4566), and statement by Mariela Contreras Cruz, rendered before the 21st Notary Public’s Office of the Circuit of Bogotá, on December 22, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 69, page 4177).

96.164 Mariela Contreras Cruz suffers heart and liver illnesses. [FN169]

[FN169] See testimony of Mariela Contreras Cruz rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statement rendered as testimony before a notary public (affidavit) by Yur Mary Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4525).

With regard to José Rolan Valencia and his next of kin

96.165 José Rolan Valencia was born on February 21, 1954 and he was 43 years old when he died. [FN170]

[FN170] See birth certificate of José Rolan Valencia (file with appendixes to the brief containing pleadings and motions, appendix 55, page 4061).

96.166 José Rolan Valencia worked for the Mayor’s Office as the administrator of the landing strip at the airport in Mapiripán. His family was financially dependent on him. [FN171]

[FN171] See testimony of Marina Sanmiguel Duarte rendered before the Inter-American Court during the public hearing held on March 7, 2005; statement rendered as testimony before a notary public (affidavit) by Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4533 to 4537); sworn statement rendered by witness Yinda Adriana Valencia Sanmiguel on February 16, 2005 (file with statements rendered before or authenticated by a notary public, pages 4573 and 4574), and

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statement by Marina Sanmiguel Duarte, rendered before the 2d Notary Public's Office of Villavicencio, on December 11, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 62, page 4128).

96.167 José Rolan Valencia was the common-law spouse of Marina Sanmiguel Duarte por approximately 14 years and was her spouse for almost six months. Their children were Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel. [FN172]

[FN172] See marriage certificate of Marina Sanmiguel Duarte and José Rolan Valencia (file with appendixes to the brief containing pleadings and motions, appendix 55, page 4063); birth certificates of Nadia Mariana Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johanna Marina Valencia Sanmiguel, Roland Andrés Valencia Sanmiguel and Ronald Mayiber Valencia Sanmiguel (file with appendixes to the brief containing pleadings and motions, appendix 55, pages 4067 to 4075); testimony of Marina Sanmiguel Duarte rendered before the Inter-American Court during the public hearing held on March 7, 2005, and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, page 4592).

96.168 The next of kin of José Rolan Valencia have been displaced. The family's economic crisis increased with the displacement. [FN173]

[FN173] See testimony of Marina Sanmiguel Duarte rendered before the Inter-American Court during the public hearing held on March 7, 2005; statement rendered as testimony before a notary public (affidavit) by Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4536), and sworn statements rendered by witnesses Yinda Adriana and Johanna Marina Valencia Sanmiguel on February 16, 2005 (file with statements rendered before or authenticated by a notary public, pages 4573, 4574 and 4577).

96.169 Marina Sanmiguel Duarte received support from the Red de Solidaridad, with which she bought a lot in Villavicencio. [FN174]

[FN174] See testimony of Marina Sanmiguel Duarte rendered before the Inter-American Court during the public hearing held on March 7, 2005, and statement rendered as testimony before a notary public (affidavit) by Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4536).

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96.170 On February 1, 2005 the next of kin of José Rolan Valencia signed a Total Conciliation Agreement with the Ministry of Defense, which was approved by the Administrative Law Court of Meta (supra paras. 96.130 and 96.131).

With regard to Álvaro Tovar Muñoz and his next of kin

96.171 Álvaro Tovar Muñoz worked as a butcher. [FN175]

[FN175] See application filed on October 24, 1998 by Beatriz Rojas Vargas et al., before the Administrative Law Court of Meta (file with appendixes to the application, appendix 62, page 1188).

96.172 Álvaro Tovar Muñoz was married to Beatriz Rojas Vargas. Their daughter was Yulieth Lorena Tovar Rojas. His father was Ernesto Tovar Loaiza and his adoptive mother was María Teresa Pérez Carrillo. His siblings were Ernesto, Fatty, Ligia and Edelmira Tovar Muñoz, and Sandra Milena Tovar Pérez, Adriana Tovar Pérez. [FN176]

[FN176] See application filed on October 24, 1998 by Beatriz Rojas Vargas et al., before the Administrative Law Court of Meta (file with appendixes to the application, appendix 62, pages 1187 and 1188), and February 2005 ruling by the Administrative Tribunal of Meta (file with evidence tendered by the State, page 4771).

96.173 On February 1, 2005, the next of kin of Álvaro Tovar Muñoz signed a Total Conciliation Agreement with the Ministry of Defense, which was approved by the Administrative Law Court of Meta (supra paras. 97.130 and 97.131).

With regard to the damage caused to the next of kin of the alleged victims and the costs and expenses

96.174 The inhabitants of Mapiripán were subjected to conditions of terror between July 15 and 20, 1997 and the partial impunity in this case has caused and continues to cause suffering to the next of kin of the alleged victims: several of them witnessed how the paramilitary took away their next of kin, they heard their cries for help while they were tortured, they learned that the bodies were thrown into the river and, in two cases, they found their tortured bodies (supra paras. 96.53, 96.54 and 96.55). Also, after the facts of July 1997, most of the population of Mapiripán left the town (supra para. 96.63 and 96.64). All this has created a state of deep fear among the next of kin of the victims, which has not allowed them to return to Mapiripán, to file complaints before the authorities regarding the facts, and to participate in the domestic proceedings –only one of the next of kin is a civil party in the criminal proceeding (supra para. 96.103) and the next of kin of only four alleged victims have begun administrative-law proceedings regarding the facts (supra paras. 96.127 to 96.129) -. Said situation has also led to the identification of no more

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than twenty individuals as executed or missing persons, despite the approximate number of victims of the massacre.

96.175 The next of kin of the alleged victims have suffered pecuniary and non-pecuniary damage directly resulting from the facts; this has affected their physical and psychological health, has had an impact on their social and work relations, has altered their family dynamics and, in some cases, has endangered the lives and personal safety of some of their members. [FN177]

[FN177] See testimony of Luz Mery Pinzón, Nory Giraldo de Jaramillo, Mariela Contreras Cruz, Marina Sanmiguel Duarte and Viviana Barrera Cruz rendered before the Inter-American Court during the public hearing held on March 7, 2005; statements rendered as testimony before a notary public (affidavit) by María Teresa, Esther and Sara Paola Pinzón López, Carmen Johanna Jaramillo Giraldo, Yur Mary and Zuli Herrera Contreras, Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public); sworn statements rendered by witnesses Maryuri Caicedo Contreras, Yinda Adriana Valencia Sanmiguel and Johanna Marina Valencia Sanmiguel, and witnesses Roland Andrés Valencia Sanmiguel Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public), and sworn statement rendered by expert witness Ana Deutsch on February 15, 2005 (file with statements rendered before or authenticated by a notary public, pages 4584, 4588, 4592 to 4598, 4606, 4607 and 4609).

96.176 The Corporación Colectivo de Abogados “José Alvear Restrepo” and the Center for Justice and International Law (CEJIL) have incurred expenses in connection with processing of the instant case before the bodies of the Inter-American System for the Protection of Human Rights, representing some of the next of kin of the alleged victims. [FN178]

[FN178] See vouchers of costs and expenses incurred by the Corporación Colectivo de Abogados “José Alvear Restrepo” and by the Center for Justice and International Law (appendixes to the final pleadings of the representatives, appendix 4, pages 5408 to 5661).

IX. INTERNATIONAL RESPONSIBILITY OF THE STATE

97. Pleadings of the State

a) the State has acknowledged its international responsibility for the violation of Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in connection with the facts mentioned in section B of Chapter VI of the application filed by the Commission. Nevertheless, taking into account the content of domestic rulings, it argues that said responsibility derives from irregular actions by its agents and not from a policy of the State or of its Institutions;
b) with regard to the facts in Mapiripán, several members of the Colombian military forces were convicted by regular courts and disciplinarily punished, and these findings are the basis for the acknowledgment of responsibility of the State, as the members of the Security Forces are

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undoubtedly agents of the State and therefore their acts or omissions are attributable to it. What the State does not accept is attributing to it the acts of the self-defense groups, as the Inter-American Commission argues in the application. Attributing the acts of members of said self-defense groups to the State as if they were its agents and arguing that the State incurs international responsibility for those acts would be contrary to International Law;

c) with regard to the responsibility of the State and its attribution under International Law:

i. international responsibility derives from the abridgment of an international obligation, whatever its origin, whether in a treaty, in customary law, or otherwise (such as a unilateral act by a State), insofar as the violation is attributable to the State.

ii. the Convention establishes the primary rules, that is, the law regarding the content and duration of the substantive obligations of the State, while the law regarding the responsibility of the State provides the general framework –the rules called secondary- that indicate the components and consequences of the abridgment of a primary rule;

iii. since the American convention itself does not develop a theory of the internationally unlawful act, and therefore does not include all aspects involving the concept of international responsibility of the States, said instrument does not constitute lex specialis regarding this matter. Only Article 63 of the Convention refers to a concrete aspect of responsibility, the obligation to provide reparations or compensation; and

iv. there are no provisions in the Convention that develop the topic of attribution of conduct to the State. Therefore, to establish the responsibility of the State for acts by individuals it is absolutely necessary to take into account international standards regarding the responsibility of the States, especially what has been codified by the International Law Commission and existing customary international law on this subject;

d) according to customary international law and legal scholarship, as well as the Articles of the ILC, it is a general principle that the behavior of private individuals is not attributable to the State, save for two specific situations foreseen in Articles 8 and 9 of the ILC, which are conduct under the direction or effective control of the State, and absence or default of public authorities. The jurisprudence of the International Court of Justice (case regarding Military and Paramilitary Activities in and against Nicaragua) and the International Criminal Tribunal for the Former Yugoslavia (Tadic case) corroborates the above. Another possibility of attributing conduct of private individuals to the State is that foreseen in Article 11 of the Articles of the ILC. In that hypothetical, it is necessary for there to be both acknowledgment and adoption, and the expression of both must be sufficiently unequivocal; in other words, rather than a general acknowledgment of the factual situation, it is necessary for the State to identify the conduct and accept responsibility for it;

e) in the case of the Mapiripán Massacre there were no instructions or effective control by the State nor a delegation of public authority, and the State neither acknowledges nor adopts the criminal acts of the self-defense groups in this case or in any other. Instead, its policy was violated and its Law breached by those groups and by some of its agents who collaborated, even if by omission, in those facts. In this regard, it is necessary to take into account that:

i. the self-defense groups are completely autonomous organizationally and financially, they have their own command structure and leaders whom their members recognize as the "Authority of the Organization," which entails complete disregard for the legitimately established and constitutionally recognized authorities, and places them outside the institutionality of the State in their structure and funding. These illegal groups have clear

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criminal objectives, including confrontation, outside the law, with other illegal armed groups, as well as illegal drug trafficking;

ii. one of the main objectives of the policies of the State is to combat all armed groups outside the Law. For this reason, Colombia has also been attacked by the self-defense groups, as its victims include judicial officials and other public officials;

iii. in the case of Mapiripán, the massacre was planned and executed by the self-defense groups, who do not depend on others to carry out their criminal activities. The same applies to the narco-guerrilla groups, who likewise commit these atrocious acts and move about the national territory without the need for logistic or financial support. In both cases, the State combats them. What has unfortunately happened in some cases is that members of the Armed Forces have collaborated, as individuals, with these extreme right-wing or left-wing groups; and

iv. the State cannot be responsible for the acts of members of the self-defense groups or of the narco-guerrilla forces, under the terms of international law regarding the responsibility of States. The State is responsible for omissions by its authorities, when they could have protected the population and did not do so;

f) the members of the Army who collaborated with these self-defense groups, as individuals, even if they did so by omission and in the way established by the regular courts, acted outside the Law and for this reason they have been sentenced to 30 to 40 years in prison. In the framework of its commitment to human rights, the State does acknowledge its responsibility because certain members of its Armed Forces, who did not act as the Law ordered them to act, did not protect the population and their omission entailed a violation of an international obligation; and

g) it should be noted that, in the case of the "19 Tradesmen v. Colombia," one of the considerations of the Court to reach the conclusion that the State was responsible by omission in that case, in which the criminal acts were carried out by members of self-defense groups, was that the legislation which initially allowed the existence of certain groups was in force at the time of the facts. In the instant case of the Mapiripán Massacre, that legislation was repealed many years before and the existence of those groups and their activities was criminalized by Decrees 1194 of June 8, 1989 and 2256 of 1991. The decision of the Court in the Paniagua Morales et al. case, mentioned by the Commission when it attributed responsibility to the State, in which the Court found Guatemala to be responsible because this State did not deny that members of the Guardia de Hacienda were State agents, does not apply in this case either. In the instant case, Colombia emphatically denies that the members of the self-defense groups are its agents or acted as such.

Pleadings of the Commission

98. With regard to the international responsibility of the State, the Commission pointed out that:

a) the acts of private individuals involved in said acts can be attributed to the State and, therefore, entail its responsibility in accordance with international Law, for which it is sufficient to prove that there has been support or tolerance by the public authorities in the breach of the rights embodied in the Convention, as the Inter-American Court asserted in the Paniagua Morales case;

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b) as the Commission established in its Third Report on the Human Rights Situation in Colombia in 2001, the State has played a major role in the development of the so-called paramilitary or self-defense groups, allowing them to act with legal protection and legitimacy during the 1970s and 1980s, and it is generally responsible for their existence and strengthening. These groups, sponsored or accepted by sectors of the Military Forces, were to a large extent created to combat dissident armed groups. As a result of their counterinsurgency motivation, the paramilitary established ties with the Colombian Army that became stronger over more than two decades;

c) even though on May 25, 1989 the Supreme Court of Justice found the legislation that provided legal backing for the linkage of said groups to national defense unconstitutional, after which the State adopted a number of legislative measures to criminalize the activities of said groups and of those who support them, Colombia did little to dismantle the structure that it had created and fostered, especially when said groups carried out counterinsurgency activities. In fact, the ties continued at various levels, in some cases asking or allowing the paramilitary to carry out certain unlawful acts in the understanding that they would not be investigated, prosecuted or punished;

d) this situation has led the Commission to establish, for purposes of establishing the international responsibility of the State in accordance with the American Convention, that in cases in which members of paramilitary groups act with the acquiescence or support of members of the Army, they must be considered to be acting as agents of the State; and

e) in the instant case, based on the facts established, there is sufficient evidence to show participation of agents of the State in preparing and carrying out the massacre, as well as in subsequent acts, both by action and by omission. Therefore, it follows that the violations of the American Convention committed both as a result of the acts or omissions of the agents of the State and those committed by private individuals involved in the execution of the victims are attributable to the State.

99. Subsequently, in its final pleadings, the Commission pointed out that:

a) on March 7, 2005 the State acquiesced to the facts alleged in the application filed by the Commission. The application refers to a series of preparatory acts by civilians, with direct collaboration by members of the Security Forces, and it describes the grave acts of violence and destruction committed against the civilian population in the area of the municipality of Mapiripán, committed with constant and various degrees of direct participation and collaboration between members of the AUC and agents of the State, specifically members of the Security Forces;

b) the sequence of facts presented in the application essentially coincides with those mentioned in the written brief containing pleadings and motions of the representatives, as well as with subsequent rulings by Colombian judicial authorities. There are consistent references to the preparatory acts for the massacre –including movement of approximately 200 individuals in the air space, land area and rivers of several departments of Colombia- and the acts and omissions immediately after the massacre. In terms of the responsibility of civilians and agents of the State, the latter had the duty to take steps to prevent the massacre and, once it occurred, to recover the bodies of the victims, investigate, prosecute and punish those responsible for the unlawful acts;

c) the facts acknowledged by the State provide grounds for both its international responsibility for the violation of Articles 4(1), 5(1) and 5(2) and 7(1) and 7(2) of the American

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Convention to the detriment of approximately 49 fatal victims as well as for lack of due judicial elucidation of the facts, reparation of its effects, and the entailed abridgment of Articles 8(1), 19, 22, 25 and especially 1(1), all of the Convention, which is still part of the dispute; and

d) the State has acknowledged involvement of its agents in the preparatory acts which could not have taken place without their collaboration or acquiescence, such as the lack of efforts to help the victims of the violence and displacement and lack of effort to elucidate the facts and establish the criminal responsibility of those involved.

Pleadings of the representatives

100. With regard to the responsibility of the State, in addition to reiterating come of the pleadings of the Commission, the representatives pointed out that:

a) the Mapiripán Massacre is consistent with a pattern of crimes committed by paramilitary groups with complicity by the State. In other words, in Colombia there is a State policy of fostering and tolerating the unlawful activities of paramilitary groups, one that includes facilitating impunity of those responsible after cover-up and destruction of the evidence, as well as lack of investigation. Given the existence of this policy, the State is responsible for the actions of the members of the paramilitary groups, in accordance with the conclusions of the Court in the Blake case;

b) the Colombian paramilitary have historically enjoyed legal and institutional support by the State, including training, weapons, and intelligence. One of the most conclusive items of evidence of the complicity of the State with the paramilitary groups is the cloak of impunity that covers the crimes committed by these groups. The vast majority of the paramilitary who have committed grave human rights violations have not been investigated; and

c) while the State acknowledges a series of facts linked to the abridgment of Articles 4, 5 and 7 of the Convention, it excludes certain specific points made clear in the brief by the representatives and in the application by the commission, other facts submitted in the course of the proceeding in this case, as well as other violations of the Convention alleged by the representatives. Acquiescence by the State undoubtedly has significant legal value in this proceeding, as it constitutes an acknowledgment of the key facts to establish the abridgment of said rights of the victims and their next of kin. Nevertheless, given its partial nature, it does not encompass facts such as those specified regarding the circumstances of the death or disappearance of the victims or the level of connivance and complicity that existed between the paramilitary and members of the Security Forces in carrying out the massacre.

Considerations of the Court

101. Based on the facts that have been established and the evidence tendered in the instant case, the Court will now address the scope and juridical effects of the partial acknowledgment of international responsibility by the State (supra paras. 34 and 37), in the framework of the responsibility of the State resulting from violations of the American Convention.

102. After said acknowledgment, in its final pleadings, both oral and written, the State pointed out that its responsibility derives from the irregular actions of its agents, but does not reflect a policy of the State or of its institutions, and it does not accept being attributed the acts of the self-

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defense groups as if they were its agents. Colombia based its arguments especially on the rules regarding attribution of acts contained in the United Nations International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts.

103. To decide on the issue raised by the State regarding international responsibility, it is necessary to recall the nature of the American Convention in the framework of International Law, as well as the principles that form the basis of its application and interpretation.

104. Since its first cases, the Court has based its jurisprudence on the special nature of the American Convention in the framework of International Human Rights Law. Said Convention, like other human rights treaties, is inspired by higher shared values (focusing on protection of the human being), they have specific oversight mechanisms, they are applied according to the concept of collective guarantees, they embody obligations that are essentially objective, and their nature is special vis-à-vis other treaties that regulate reciprocal interests among the States Parties. [FN179]

[FN179] See Case of Baena Ricardo. Judgment of November 28, 2003. Series C No. 104, para. 96; Case of Hilaire. Preliminary Objections, Judgment of September 1, 2001. Series C No. 80, para. 94; Case of the Constitutional Court. Competence. Judgment of September 24, 1999. Series C No. 55, para. 41, and Case of Ivcher Bronstein. Competence. Judgment of September 24, 1999. Series C No. 54, para. 42.

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105. This special nature of said treaties and their collective implementation mechanism [FN180] entail the need to apply and interpret their provisions in accordance with their object and purpose, so as to ensure that the States Party guarantee compliance with them and their effet utile in their respective domestic legal systems. [FN181] This principle applies not only to the substantive provisions of the human rights treaties (that is, those provisions that state the rights protected), but also to procedural rules. [FN182]

[FN180] See Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 69; Case of Baena Ricardo. Judgment of November 28, 2003. Series C No. 104, para. 99, and Case of Hilaire, Constantine, and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 83.

[FN181] See Case of the Indigenous Community Yakye Axa, supra note 12, para. 101; Case of Lori Berenson Mejía, supra note 13, para. 220; Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 11, para. 69, and Case of Hilaire, Constantine, and Benjamin et al., supra note 180, para. 83.

[FN182] See Case of the Serrano Cruz Sisters. Preliminary Objections, supra note 181, para. 69; Case of the "Juvenile Reeducation Institute", supra note 4, para. 205, Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, paras. 150 to 151. Likewise, see European Court of Human Rights, Klass and others v. Germany, judgment of 6 September 1978, Series A no. 28, § 34; Permanent Court of Arbitration, Dutch Portuguese Boundaries on

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the Island of Timor (Arbitral Award of 25 June 1914), The American Journal of International Law, vol. 9, 1915, pp. 250 and 266.

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106. The Court has pointed out, as the European Court of Human Rights has too, that human rights treaties are live instruments, whose interpretation must go hand in hand with evolving times and current living conditions. [FN183] This evolutive interpretation is consistent with the general rules of interpretation set forth in Article 29 of the American Convention, as well those set forth in the Vienna Convention on Treaty Law. [FN184] In this regard, when interpreting the Convention it is always necessary to choose the alternative that is most favorable to protection of the rights enshrined in said treaty, based on the principle of the rule most favorable to the human being. [FN185]

[FN183] See European Court of Human Rights, Tyrer v. The United Kingdom, judgment of 25 April 1978, Series A no. 26, para. 31.

[FN184] See The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114. Also see, among the adjudicatory cases, Case of the Indigenous Community Yakye Axa, supra note 12; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 165; 146; Case of Juan Humberto Sánchez. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations. (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C. No. 102, para. 56; Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, paras. 146 to 148, and Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, paras. 41-44.

[FN185] See Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 181; Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 184, and Case of Baena Ricardo et al. Judgment of February 2, 2001. Series C No. 72.

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107. While the American Convention itself explicitly refers to the rules of general International Law for its interpretation and application, [FN186] the obligations set forth in Articles 1(1) and 2 of the Convention are ultimately the basis for the establishment of the international responsibility of a State for abridgments to the Convention. Thus, said instrument constitutes lex specialis regarding State responsibility, in view of its special nature as an international human rights treaty vis-à-vis general International Law. Therefore, attribution of international responsibility to the State, as well as the scope and effects of the acknowledgment made in the instant case, must take place in light of the Convention itself.

[FN186] The preamble of the American Convention explicitly refers to the principles asserted and developed in international instruments, “worldwide as well as regional in scope” (para. 3) and Article 29 requires that it be interpreted in light of the American Declaration and other international acts of the same nature.” Other provisions refer to obligations imposed by international law regarding suspension of guarantees (Article 27), as well as the “generally

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recognized principles of international law" when defining exhaustion of domestic remedies (Article 46(1)(a)).

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108. The very origin of said responsibility in fact arises from non-fulfillment of the obligations set forth in Articles 1(1) and 2 of the Convention. In this regard, the Court has pointed out that

Article 1(1) is crucial to establish whether a violation of the human rights embodied in the Convention can be attributed to a State Party. Said Article does in fact entail a commitment by the States Party to the fundamental duties of respecting and ensuring rights, so any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international Law, to actions or omissions by any public authority constitutes an act attributable to the State, entailing its responsibility under the terms set forth in this same Convention.
In accordance with Article 1(1) any form of exercising public authority that violates the rights embodied in the Convention is unlawful. In this regard, any circumstances in which a body or official of the State or of a public institution inappropriately abridges one of said rights constitutes disregard for the duty to respect rights, enshrined in that Article.
This conclusion is independent of whether the body or official acted contravening domestic legal provisions or going beyond the limits of his own sphere of competence, as it is a principle of International Law that the State is responsible for the acts of its agents carried out in their official capacity and by their omissions, even if they act outside the limits of their sphere of competence or in violation of domestic law. [FN187]

[FN187] See Case of the Gómez Paquiyauri Brothers, supra note 182, para. 72; Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, para. 63; Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 76, and Case of Baena Ricardo et al., supra note 179, para. 178.

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109. This Court has likewise pointed out that

[t]he general duty under Article 2 of the American Convention entails taking steps in two directions. On the one hand, eliminating all types of provisions and practices that involve a violation of the guarantees set forth in the Convention. On the other hand, issuing provisions and developing practices conducive to effective respect for said guarantees. [FN188]

[FN188] See Case of Lori Berenson Mejía, supra note 13, para. 219; and see Case of the "Juvenile Reeducation Institute", supra note 4, para. 206; Case of the "Five Pensioners", supra note 187, para. 165.

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110. In other words, the origin of the international responsibility of the State is found in "acts or omissions by any authorities or bodies of the State, whatever their hierarchical level, that violate the American Convention" [FN189], and it is generated immediately with the

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internationally unlawful act attributed to the State. To establish that there has been an abridgment of the rights embodied in the Convention it is not necessary to establish, as would be the case in domestic criminal law, the guilt of its perpetrators or their intent, and it is also not necessary to individually identify the agents deemed responsible for said abridgments. [FN190] It is enough to prove that there has been support or tolerance by public authorities in the infringement of the rights embodied in the Convention [FN191], or omissions that enabled these violations to take place.

[FN189] See Case of the Gómez Paquiyauri Brothers, supra note 182, para. 71; Case of Juan Humberto Sánchez, supra note 184, para. 142; Case of the "Five Pensioners", supra note 187, para. 163.
[FN190] See Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 141; Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 41, and Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 75.
[FN191] See Case of the 19 Tradesmen, supra note 190, para. 141; Case of Juan Humberto Sánchez, supra note 184, para. 44, and Case of Cantos. Judgment of November 28, 2002. Series C No. 97, para. 28.

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111. Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have erga omnes obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. [FN192] The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes obligations embodied in Articles 1(1) and 2 of the Convention.

[FN192] See Juridical Condition and Rights of the Undocumented Migrants., Advisory Opinion OC-18/03, supra note 190, para. 140.

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112. The Court has pointed out the existence of said effects of the Convention with regard to third parties in adjudicatory cases, [FN193] as well as when it has ordered provisional measures to protect members of groups or communities from acts and threats caused by State agents and by private individuals. [FN194] In this regard, in its advisory opinion on the Juridical Condition and Rights of Undocumented Migrants, the Court also pointed out that

[…] the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (erga omnes). This

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obligation has been developed in legal writings, and particularly by the Drittwirkung theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals. [FN195]

[FN193] See Case of the Moiwana Community, supra note 4, para. 211; Case of Tibi, supra note 16, para. 108; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 91; Case of the 19 Tradesmen, supra note 190, para. 183; Case of Maritza Urrutia, supra note 193, para. 71; Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 111; Case of Juan Humberto Sánchez, supra note 184, para. 81.

[FN194] See Case of the Mendoza Penitentiaries. Provisional Measures. June 18, 2005 Order; Case of the Sarayaku Indigenous People. Provisional Measures. July 6, 2004 Order; Case of the Kankuamo Community. Provisional Measures. July 5, 2004 Order; Case of the Communities Jiguamiandó and Curbaradó. Provisional Measures. March 6, 2003 Order. Series E No. 4, page 169; Case of the Peace Community San José Apartadó. Provisional Measures. June 18, 2002 Order. Series E No. 4, page 141, and Case of the Urso Branco Prison. Provisional Measures. June 18, 2002 Order. Series E No. 4, page 53.

[FN195] See Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03, supra note 187, para. 140.

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113. The State can only be held responsible under the American Convention after the State has had the opportunity to redress it by its own means, and attribution of said responsibility to a State for acts by State agents or private individuals must be established based on the specificities and circumstances of each case.

114. Likewise, with regard to establishment of the international responsibility of the State in the instant case, the Court cannot set aside the existence of general and special duties of the State to protect the civilian population, derived from International Humanitarian Law, specifically Article 3 common of the August 12, 1949 Geneva Agreements and the provisions of the additional Protocol to the Geneva Agreements regarding protection of the victims of non-international armed conflicts (Protocol II). Due respect for the individuals protected entails passive obligations (not to kill, not to violate physical safety, etc.), while the protection due entails positive obligations to impede violations against said persons by third parties. Carrying out said obligations is significant in the instant case, insofar as the massacre was committed in a situation in which civilians were unprotected in a non-international domestic armed conflict. In this regard, the Constitutional Court of Colombia has deemed that

> Article 4 of [Protocol II] not only orders general protection of non-combatants but also, developing Article 3 common of the 1949 Geneva Conventions, embodies a series of absolute prohibitions, which may be considered the essential nucleus of the guarantees provided by international humanitarian law. […]
> [the principle of] differentiating between the combatant and non-combatant population has basic consequences. Thus, first of all, as the immunity rule of Article 13 [of Protocol II] sets forth, the parties have the general obligation to protect the civilian population against the dangers caused by military operations. Therefore, as paragraph 2 of this article states, this population, as such,

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cannot suffer military attack, and acts or threats of violence whose main aim is to terrorize it are forbidden. Also, this general protection of the civilian population against the dangers of war also means that it is not in accordance with international humanitarian law for one of the parties to involve this population in the armed conflict, since in this way it becomes an actor in that conflict, which would expose it to military attacks by the other party. […] Whatever the legal status of normalcy or of a politically abnormal situation, civil society that is a victim of armed confrontation must be protected by the State. [FN196]

[FN196] See judgment C-225/95 of May 18, 1995, issued by the Constitutional Court, paras. 35 and 30.

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115. The obligations derived from said international provisions must be taken into account, according to Article 29.b) of the Convention, because those who are protected by said treaty do not, for that reason, lose the rights they have pursuant to the legislation of the State under whose jurisdiction they are; instead, those rights complement each other or become integrated to specify their scope or their content. While it is clear that this Court cannot attribute international responsibility under International Humanitarian Law, as such, [FN197] said provisions are useful to interpret the Convention, [FN198] in the process of establishing the responsibility of the State and other aspects of the violations alleged in the instant case. These provisions were in force for Colombia at the time of the facts, as international treaty agreements to which the State is a party, [FN199] and as domestic law, [FN200] and the Constitutional Court of Colombia has declared them to be jus cogens provisions, which are part of the Colombian "constitutional block" and are mandatory for the States and for all armed State and non-State actors involved in an armed conflict. [FN201]

[FN197] See Case of the Serrano Cruz Sisters. Preliminary Objections, supra note 181, para. 108, and Case of Las Palmeras. Preliminary Objections. Judgment of February 4, 2000. Series C no. 67, para. 33.
[FN198] See Case of the Serrano Cruz Sisters. Preliminary Objections, supra note 181, para. 119; Case of Las Palmeras. Preliminary Objections. Judgment of February 4, 2000. Series C No. 67, paras. 32 to 34, and Case of Bámaca Velásquez. Judgment of November 25, 2000. Series C No. 70, paras. 208 to 209.
[FN199] Protocol II was ratified by Colombia on August 14,1995 and entered into force on February 14, 1996.
[FN200] Law 171 of December 16, 1994, adopting the "Protocol additional to the Geneva Conventions of August 12, 1949, regarding protection of the victims of non-international armed conflicts (Protocol II)".
[FN201] See judgment C-225/95 of May 18, 1995, issued by the Constitutional Court.

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116. In the instant case, the acts committed by the group of paramilitary against the victims are part of the facts acknowledged by the State, since they are included in section B of Chapter VI of the application filed by the Commission (supra paras. 34, 37 and 96.29 to 96.47), that is:

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a) according to the Attorney General's Office, the Colombian Army allowed the airplanes that transported said paramilitary to land, with no type of control, registration or record (supra paras. 96.30 and 96.31);
b) the Colombian Army facilitated transportation of the paramilitary to Mapiripán. The paramilitary were transported from the airport in two "reo" type trucks of the type usually used by the Army, which were authorized to approach the landing strip due to a call from a person who identified himself as an officer of the "Joaquín París" battalion. The trucks went to a place near the so-called "Trocha Ganadera" [Cattle Trail] leading toward the plains and into the jungle. On the road, they were met by paramilitary from Casanare and Meta and from there they went by river, through "El Barrancón" –where the 2d Mobile Brigade and the Marine Infantry were stationed–; they continued their route unhindered to Charras, on the opposite side of the Guaviare River, in front of Mapiripán (supra para. 96.32);
c) the members of the paramilitary group moved through training areas of the troops of the 2d Mobile Brigade without being stopped (supra para. 96.32). Collaboration between the members of the Army and of the AUC involved supplying stores and communications to the paramilitary (supra para. 96.35);
d) the incursion of the paramilitary in Mapiripán was meticulously planned several months before July 1997, and it was carried out with logistic support and collaboration, acquiescence and omissions by members of the Army. Participation of State agents in the massacre was not restricted to facilitating entry of the AUC into the region, as the authorities were aware of the attack committed against the civilian population in Mapiripán and they did not take the necessary steps to protect the members of that community (supra para. 96.43);
e) the Attorney General's Office established that, nevertheless, in face of the arrival of the AUC, the troops of the "Joaquín París" battalion were moved from San José de Guaviare elsewhere, leaving the population in said place and in Mapiripán unprotected. Lieutenant Colonel Orozco Castro stated that when it became necessary to send military forces to Mapiripán, they had been deployed to other places such as Puerto Concordia, El Retorno and Calamar. On July 15, 1997 the last companies of the Joaquín París Battalion were ordered to go to Calamar, even though there was no confirmation of public order disturbances there. The army troop movements were unjustified and based on conjectures or mere contingencies (supra para. 96.38);
f) according to the Attorney General's Office, omissions by the VII Brigade were not merely non-fulfillment of their legal duty to control the area, but also involved "abstention, necessarily in connivance with the illegal armed group, as well as effective positive attitudes favoring attainment of the goal of the paramilitary, as undoubtedly they would not have been able to act without that assistance" (supra para. 96.44);
g) members of the Army apparently took steps to cover up the facts (supra para. 96.45); and
h) omissions by the VII Brigade included non-cooperation with the judicial authorities who sought to reach the place of the events (supra para. 96.46).

117. In this regard, it is pertinent to note the decisions of domestic courts regarding the criminal liability of certain members of the Armed Forces involved in the facts of the instant case. When the Constitutional Court of Colombia addressed the nature of the actions and omissions committed by some of said agents, in its ruling on the action for protection of constitutional rights filed in connection with the conflict regarding competence between the military criminal and regular criminal venues in this case, it pointed out that:

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[…] if a person's sphere of competence includes security duties regarding movement of persons or protection of certain legal rights, it is not significant for the decision on attribution of liability to establish whether that person breached those duties by means of an active conduct […] or due to an omission […]. In a grave violation of fundamental rights, the conduct of the guarantor who actively intervenes in taking over a town is similar to that of one who does not provide security, thus leaving the inhabitants absolutely defenseless. […]

[…] the Military Forces, as well as the National Police, are in a position of guarantors derived from their obligation to fulfill non-renounceable duties in a constitutional State. Article 217 of the Constitution establishes that it is a function of the Military Forces to ensure constitutional order. Said order is not restricted to protection of the democratic structure of the country, but also encompasses the duty to actively and effectively participate (P.C. Art. 209) in the defense of the constitutional rights of the associated members. The State has the non-renounceable duty to protect those legal rights.

With regard to said duty, the Armed Forces play a crucial role. An essential part of respect for constitutional rights is based on the obligation of the State to protect those entitled to said rights against violation of those rights by private individuals. Defense of these rights is not restricted to the State abstaining from abridging them. As stated above, it entails confronting those who breach said rights. […]

The facts known as the Mapiripán Massacre are one of the saddest moments of Colombian history. The situation of terror suffered by the population of Mapiripán, the atrocious acts of general and individual torture, degradation of the human condition and murders, are well-known by public opinion. The background to this judgment […] synthetically explains –and also adequately describes- the conducts carried out in said part of the country, classified as acts totally foreign to any minimum feeling of humanity.

The accounts show the extreme gravity of the facts, absolutely degrading the principle of human dignity and openly contrary to the Constitution, in addition to the extremely clear violation of the basic constitutional rights of the associated members. These conducts, in accordance with the jurisprudence discussed above, can only be investigated by regular courts, as they are in no way related to the mission of the members of the Military Forces. If the two members of the Security Forces were in the position of guarantors, which obligated them to protect the population, when they are charged with grave human rights violations by omission (committed by omission) clearly it is a behavior that is unrelated to their service role.

The above considerations should have sufficed to decide that the Attorney General's Office should retain competence to investigate the liability of Brigadier General Uscátegui and of Lieutenant Colonel Orozco. However, these two officers did not participate directly in said barbarous acts, but rather were linked to the criminal proceeding due to alleged remiss conduct. […]

Holding a position as guarantor does not ensure a direct relation to the service, as the injurious result (the crime against humanity) is charged directly, and not as a mere omission while exercising that position.

As highlighted above, in Mapiripán the duty to respect human dignity was flagrantly breached by a group that challenges the monopoly of the use of force by the State. In other words, the basic principles of the constitutional order –which those under investigation were entrusted with protecting- were abridged. Their role as guarantors required that they intervene to avoid the facts that degraded humanity, and that they combat those who seek to usurp State power. Due to the

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extremely grave consequences derived from their omission, no relationship can be found with their service functions.
The precedent of the Constitutional Court regarding competence of military criminal justice rigorously points out that it is only possible to assign competence to military criminal justice if there is no doubt about the link between the service and the act under investigation. In the instant case, it is not possible to argue that there is no doubt. Instead, the role of guarantor impedes classification of the omission as a service-related act. [FN202]

[FN202] See judgment SU-1184 of November 13, 2001, issued by the Full Court of the Constitutional Court (file with appendixes to the application, appendix 60, pages 979, 983, 884, 995 and 1002).
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118. This ruling by the Constitutional Court of Colombia was the basis for the Council of the Judiciary to order that the proceeding be remitted to regular criminal venue and for the Attorney General's Office to annul the proceedings under military criminal venue and to file charges against members of the Armed Forces and against members of the paramilitary involved in the facts, classifying their degree of participation as perpetrators of and as accomplices in the facts, as appropriate (supra paras. 96.109 to 96.115 and infra para. 203). In other words, the decisions of judicial authorities also show that the actions of said State agents constitute true acts of collaboration, and not mere omissions, as the State argued before this Court. In the February 15, 2005 judgment by the Criminal Chamber of the High Court of the Judicial District of Bogotá (supra para. 122), which upheld the conviction of the three military as co-perpetrators of and accomplices in the crimes of aggravated homicide, aggravated kidnapping, terrorism and conspiracy to commit a crime, as well as against three paramilitary, as perpetrators of said crimes, defining the conduct of the "former members of the Armed Forces" in its preliminary considerations, said Criminal Chamber stated:

Independently of the criminal liability found during the investigation regarding each of the members of the security forces involved in this proceeding, this Chamber must highlight the tangible fact that throughout the proceeding was found to determine the events under investigation: the link that must definitely be asserted between the members of the AUC who operated in the region of San José del Guaviare and certain members of the National Army stationed there. An unfortunate alliance that from the start is the only explanation and is the cause-effect of the very uncommon movement by plane of the members of the AUC from the Urabá region of Antioquia to San José del Guaviare and their free movement to Mapiripán.
First of all, elementary logic shows that no organization outside the Law, without guarantees regarding safe and free movement, is going to send dozens of its men in two planes carrying guns and ammunition in boxes that, under different conditions, must necessarily be inspected by the authorities at the airport of destination, and those bearing them apprehended.
They were two commercial planes […] that stood out because of their size in contrast with the small planes that arrived at an equally small airport such as that of San José del Guaviare. In addition to the fact that they were not inspected by any authority at the airport, nor was their arrival documented in any way, it is also unheard of that at that same landing strip its occupants boarded trucks, loading their boxes with weapons and military material, left the airport and

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passed the inspections at a military roadblock and other control posts located a few minutes from the airport, passed in front of the Joaquín París Battalion and close to Mobile Brigade No. 2, with no difficulty. All the above means that their arrival by airplane and their unchallenged movement to Mapiripán were ensured by the same authority in charge of surveillance and control in all that territorial iter, and in this regard rational appraisal and good judgment cannot close their eyes to the evidence, all will be seen in the course of the respective analysis. [FN203]

[FN203] See Judgment of February 15, 2005 issued by the Criminal Chamber of the High Court of the Court District of Bogotá (file with evidence tendered by the State, page 4737).

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119. The Court also bears in mind that the United Nations High Commissioner for Human Rights has documented numerous cases in Colombia in which the links between public employees and the paramilitary groups have been proven in connection with facts similar to those of the instant case, as well as remiss attitudes by members of the security forces with regard to actions by said groups. In the reports published since 1997 on the human rights situation in Colombia, the Office of the United Nations High Commissioner for Human Rights has documented the representative cases of violations of the Right to Life, in which it was alleged that the government and the Armed Forces collaborated with the paramilitary to murder, threaten or displace the civilian population. According to the 1997 report, the acts committed by the paramilitary constituted the greatest number of human rights violations reported in the country in 1997, including massacres, forced disappearances, and hostage taking. In addition to the above, in her reports the High Commissioner constantly refers to impunity of human rights violations and abridgments of International Humanitarian Law committed by the paramilitary and the connivance between those groups and the security forces, as a consequence of criminal proceedings and of criminal proceedings and of disciplinary investigations opened against them, that do not lead to the establishment of responsibilities nor to the respective punishment (supra para. 96.20). Specifically with regard to what happened in Mapiripán, the Report by the United Nations High Commissioner for Human Rights states that, “the specifics of the cases filed before the Office in Colombia suggest that the facts could not have taken place without that acquiescence, support, or complicity. Aside from the testimony of the witnesses an the observations by the Commissioner herself, the Ombudsperson [Defensor del Pueblo] also acknowledged that the paramilitary “ha[d] become the illegal arm of the security forces, carrying out the dirty work that the latter cannot do.” [FN204]

[FN204] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in 1997, E/CN.4/1998/16, March 9, 1998, paras. 29 and 91; Fourth Report by the Ombudsman to the Colombian Congress, 1997, pages 59 and 60, cited in said Report by the High Commissioner.

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120. In the instant case, Colombia acknowledged the violation of international treaty obligations due to “the facts of July 1997” in Mapiripán, but it subsequently objected to attribution to the State of acts by the paramilitary who carried out said massacre. The Court notes

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that, while the acts that took place between July 15 and 20, 1997, in Mapiripán, were committed by members of paramilitary groups, the massacre could not have been prepared and carried out without the collaboration, acquiescence, and tolerance, expressed through several actions and omissions, of the Armed Forces of the State, including high officials of the latter. There is in fact no documentary evidence before this Court proving that the State directly conducted the massacre or that there was a dependent relationship between the Army and the paramilitary groups or a delegation of the public functions of the former to the latter. However, based on an analysis of the facts acknowledged by the State, it clearly follows that both the behavior of its own agents and that of the members of the paramilitary groups are attributable to the State insofar as they in fact acted in a situation and in areas that were under the control of the State. In point of fact, the incursion by the paramilitary in Mapiripán was an act planned several months before July 1997, carried out with full knowledge, logistic preparations and collaboration by the Armed Forces, who enabled the paramilitary to leave Apartadó and Neclocí toward Mapiripán in areas that were under its control, and left the civilian population defenseless during the days of the massacre by unjustifiably transferring the troops to other places (supra paras. 96.30 to 96.39, 96.43 and 116).

121. Collaboration by members of the armed forces with the paramilitary was shown by a set of grave actions and omissions aimed at enabling the massacre to take place and at covering up the facts to seek impunity for those responsible. In other words, the State authorities who were aware of the intentions of the paramilitary group to conduct a massacre to instill fear among the population not only collaborated in preparations for said group to be able to carry out these criminal actions but also made it appear to public opinion that the massacre was committed by the paramilitary group without their knowledge, participation, and tolerance, situations that are contrary to what has already been demonstrated in the proven facts, also acknowledged by the State (supra paras. 34, 96.29 to 96.47).

122. Likewise, since it has partially acknowledged its international responsibility for violations of the American Convention, the State cannot validly exclude from the content of its declaration any of the points acknowledged. Thus, we cannot accept the claim by the State that it must not be found responsible for the acts committed by the paramilitary or self-defense groups in the Mapiripán massacre, as this would render the previously made acknowledgment void of content, and would lead to a substantial contradiction with some of the facts that it has acknowledged.

123. In brief, having established that there was a link between the armed forces and this paramilitary group to commit the massacre, based on the acknowledgment of the facts by the State and the body of evidence in the file, the Court has reached the conclusion that the international responsibility of the State has resulted from a set of actions and omissions by State agents and private citizens, conducted in a coordinated, parallel or linked manner, with the aim of carrying out the massacre. First of all, said agents collaborated directly or indirectly with the acts committed by the paramilitary, and secondly, they were remiss regarding their duty to protect the victims against said acts and regarding their duty to effectively investigate them, all of which has led to violations of human rights embodied in the Convention. In other words, since the acts committed by the paramilitary against the victims in the instant case cannot be considered mere acts amongst private individuals, as they are linked to actions and omissions by

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State officials, the State is found to be responsible for said acts, based on non-fulfillment of its erga omnes treaty obligations to ensure the effective exercise of human rights in said relations amongst individuals.

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124. Based on the above considerations, this Court grants full effectiveness to the partial acknowledgment of responsibility (supra paras. 34 and 37), according to which the State is responsible

[…] for the violation of Articles 4(1), 5(1) and [5](2), and 7(1) and [7](2) of the American Convention on Human Rights, in connection with the facts that took place in Mapiripán in July 1997.

125. According to these terms, in the following chapters the Court will address the points regarding the merits and the respective reparations with regard to which there continues to be a dispute regarding the responsibility of the State, that is, the alleged violation of:

a) Article 5 of the Convention to the detriment of the next of kin of the victims of the massacre;
b) Articles 8 and 25 of the Convention to the detriment of the next of kin of the victims;
c) Article 22 of the Convention to the detriment of the next of kin of the victims who were displaced as a consequence of the massacre; and
d) Article 19 of the Convention to the detriment of the boys and girls who are allegedly victims in the instant case.

X. ARTICLES 4, 5 AND 7 OF THE AMERICAN CONVENTION IN COMBINATION WITH ARTICLE 1(1) OF THAT CONVENTION (RIGHTS TO LIFE, TO HUMANE TREATMENT, AND TO PERSONAL LIBERTY)

Considerations of the Court

126. Article 4(1) of the Convention provides that

[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

127. Article 5(1) and 5(2) of the Convention establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.

128. Article 7 of the Convention provides that:

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1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

129. The State has acknowledged its responsibility for the violation of said Articles of the American Convention in connection with the facts of July 1997 (supra paras. 34, 96.29 to 96.47). Nevertheless, in the instant chapter the Court deems it necessary to specify certain points that are closely related to the acknowledgment of international responsibility by the State, as well as to establish whether the State is responsible for the alleged violation of Article 5 of the Convention to the detriment of the next of kin of the victims.

a) The victims of the violations of the rights to life, to humane treatment, and to personal liberty.

130. The Court notes that, under the very terms of the acknowledgment of responsibility by the State, "the paramilitary remained in Mapiripán from July 15 to 20, 1997, during which time they impeded free movement of the inhabitants of said municipality and tortured, dismembered, eviscerated and beheaded approximately 49 individuals and threw their remains into the Guaviare River" (supra para. 96.39).

131. In its brief with final pleadings, the State pointed out that it explicitly acknowledged its international responsibility for the violation of said Articles of the Convention, but it specified that it did so "with regard to those who appear [in said brief] as proven victims and likewise with regard to those who prove, in accordance with domestic law, that they are victims." The State pointed out that the victims identified in the final criminal and disciplinary proceedings are the following:

[…] Sinaí Blanco, José Roland Valencia and a body identified as N.N. are recognized as victims in Mapiripán; and in the corregimiento of La Cooperativa Antonio María Barrera, Agustín N., Álvaro Tovar Morales, Jaime Pinzón and Raúl Morales are recognized as victims.

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In the disciplinary proceeding Pacho N.N. and an unidentified male are identified as deceased victims, and Antonio María Barrera Calle, also known as "Catumare", and Nelson N.N. are listed as kidnapped persons whose whereabouts are still unknown. Alvaro Tovar Morales, Jaime Pinzón, N.N. Morales and Teresa N.N. are recognized as victims in the corregimiento of La Cooperativa.

132. Given the pleadings of the State, the Court must decide who the victims of the violation of said rights are; in other words, whether all the persons executed are victims of the violations of the rights to life, to humane treatment, and to personal liberty.

133. The Court notes that when it made said acknowledgment, the State explicitly accepted that, despite being as yet indeterminate, at least 49 victims were executed or made to disappear. In its brief with final pleadings, the State sought to limit the number of victims to only 12 persons, only 6 of whom are individually identified, which is inconsistent and incompatible with the acknowledgment of responsibility made before this Court. Also, the Court has deemed proven that there were other victims, specifically Gustavo Caicedo Rodríguez, Diego Armando Martínez Contreras, Hugo Fernando Martínez Contreras, Jaime Riaño Colorado, Omar Patiño Vaca, Eliécer Martínez Vaca, Enrique Pinzón López, Jorge Pinzón López, Luis Eduardo Pinzón López, José Alberto Pinzón López, Edwin Morales, Uriel Garzón, Ana Beiba Ramírez and Manuel Arévalo, who have been individually identified and whom the State does not include in its statement (supra paras. 96.51 and 96.52 and infra para. 254). Likewise, the State's intention to limit the victims of the instant case to the persons identified "in the final criminal and disciplinary proceedings" and to "those who prove under domestic law that they are victims" is not acceptable. In accordance with the basic principle of law regarding the international responsibility of the State according to which the States must fulfill their international treaty obligations in good faith (pacta sunt servanda), the State cannot validly resort to domestic reasons to avoid answering for the international responsibility already acknowledged before this Court. [FN205]

[FN205] See Case of the Gómez Paquiyauri Brothers, supra note 182, paras. 151 to 152. Case of Baena Ricardo et al. Competence, supra note 1879, para. 61, and Case of Juan Humberto Sánchez, supra note 184, para. 60. Likewise, see International Court of Justice, Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, (Advisory Opinion of 26 April 1988), 1988 I.C.J., p. 57, summary available at http://www.icjcij.org/icjwww/idecisions/isummaries/ ihqasummary880426.htm; Permanent Court of International Justice, Case of the Free Zones of Upper Savoy and the District of Gex, (7 June 1932) (Series A/B) No. 46, p. 167, available at http://www.icj-cij.org/icjwww/idecisions/icpij/; Permanent Court of International Justice, Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, (4 February 1932), (Series A/B) No. 44, p. 24, available at http://www.icj-cij.org/icjwww/idecisions/icpij/; Permanent Court of International Justice, The Greco-Bulgarian "Communities", (31 July 1930) (Series B) No. 17, p. 32-33, available at http://www.icj-cij.org/icjwww/idecisions/icpij/.

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134. Furthermore, with regard to the violation of the right to personal liberty, there is evidence to establish that the victims were murdered after subjecting them to a state of defenselessness and inferiority:

[…] defenselessness is related to the proximity of the means for defense and this can be seen in the gag placed on one of the bodies, as well as in the nylon and rubber ties found on the lower limbs, clear signs of the powerlessness to which the victims were subjected before they were killed. [FN206]

[FN206] See June 18, 2003 conviction, issued by the Second Criminal Court of the Specialized Circuit of Bogotá (file with appendixes to the application, appendix 4, page 47).

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135. In this regard, Leonardo Iván Cortés Novoa, who was a Judge in Mapiripán and was present at the time of the facts, stated:

Every night I watched kidnapped people go by, their hands tied behind their backs and their mouth gagged, to be cruelly murdered, in the municipal slaughterhouse in Mapiripán, every night we heard the people who were being tortured and murdered screaming for help, and there are few neighbors of the slaughterhouse who remained in the town and they avoid testifying on this massacre because logically they […] know that if they talk they may be murdered. [FN207]

[FN207] See statement made by a witness in confidence, rendered before the Office of the Attorney General on July 24, 1997 (file with appendixes to the brief containing pleadings and motions, appendix 29, page 3392).

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136. The very modus operandi of the facts in the case enables the inference that, before being executed, the victims were arbitrarily deprived of their liberty and subjected to torture or grave cruel, inhumane or degrading treatment. The signs of torture and the conditions in which some next of kin and witnesses found some of the bodies reveal not only the atrocity and barbarous nature of the facts, but also that, in the least cruel of the situations, the victims were subjected to grave psychological torture when they witnessed the execution of other persons and foresaw their fatal destiny, being subjected to the conditions of terror that existed in Mapiripán between July 15 and 20, 1997.

137. It would be incoherent to limit the determination of the victims to what is established in the criminal and disciplinary proceedings in this case, in which the majority of the victims precisely have not been identified, due to the modus operandi of the massacre and the grave lack of compliance with the State's duty to provide protection (supra paras. 96.43 to 96.47 and 116 to 123). This lack of identification is, in turn, one of the key aspects to assess the ineffectiveness of the domestic investigations and proceedings in the instant case (infra paras. 216 to 240). As was expounded in the considerations regarding Articles 8 and 25 of the Convention (infra paras. 195 to 241), one of the conditions to effectively ensure the right to life is necessarily reflected in the

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duty to investigate abridgments of said rights. Thus, the obligation to investigate cases of violation of the right to life, are a key aspect of establishment of the responsibility of the State in the instant case.

138. Therefore, in accordance with the terms of the acknowledgment of responsibility by the State, the Court deems that the State is responsible for the violation of the rights to personal liberty, to humane treatment, and to life, embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in combination with Article 1(1) of said treaty, to the detriment of a certain number of victims –whom the State itself mentioned were "approximately 49"–, among whom the following have been individually identified: José Rolan Valencia, Sinaí Blanco Santamaría, Antonio María Barrera Calle, Álvaro Tovar Muñoz, Jaime Pinzón, Raúl Morales, Edwin Morales, Manuel Arévalo, Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras, Omar Patiño Vaca, Eliécer Martínez Vaca, Gustavo Caicedo Rodríguez, Enrique Pinzón López, Luis Eduardo Pinzón López, Jorge Pinzón López, José Alberto Pinzón López, Jaime Riaño Colorado and Uriel Garzón and Ana Beiba Ramírez.

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139. In their written brief containing pleadings and motions, the representatives asserted that the State violated Articles 1, 2, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, although they did not substantiate that assertion and they did not reiterate it in their final oral and written pleadings. The Court notes that the facts alleged are analyzed in light of Articles 5, 8(1) and 25 of the Convention (supra paras. 130 to 138 and infra paras. 195 to 241).

b) Violation of the right to humane treatment of the next of kin of the victims

140. Both the Commission and the representatives alleged the abridgment of Article 5 of the Convention to the detriment of the next of kin of the victims. In this regard they stated that the latter have suffered the psychological impact and have suffered deep grief and anguish as a direct consequence of the circumstances of the massacre; of being present when the victims were detained by heavily armed men; of having found the mutilated corpses of some of these persons; of the forced disappearance and the lack of opportunity to bury their next of kin in accordance with their traditions, values or beliefs; of having been displaced; of inaction and lack of investigation by the State to punish those responsible, and of the massacre not having been investigated immediately and effectively, which continues to have a direct impact on their security and mental situation. They also alleged that the State had taken no measures to protect said next of kin from harassment and aggressions, which has generated feelings of deep insecurity and anguish.

141. As mentioned above, the State did not include the next of kin of the victims in its acknowledgment of responsibility, for which reason the Court will address whether, in the instant case, the State breached Article 5 of the Convention to the detriment of the next of kin.

142. The Court deemed it proven that the inhabitants of Mapiripán were subjected to conditions of terror between July 15 and 20, 1997. Several of them witnessed how the paramilitary took away their next of kin, heard them scream for help while they were tortured,

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heard about or witnessed how the bodies were thrown into the river, and in two cases they found their tortured bodies. The facts in the case show the deep fear, suffering and grief of the next of kin of the victims, as a consequence of the facts and the level of atrocity to which they were subjected. This situation is shown by the words of some of the next of kin of the victims who testified in the proceeding before this Court:

a) Carmen Johanna Jaramillo:

When I approached I recognized him, I recognized the sweatshirt that he was wearing and everything, and it was my father. I sat next to him and lost control of everything mentally, I almost went mad, they were going to cover him, I said don't cover him, he's going to wake up. I squatted next to him and lifted his head to my legs and his throat was slit. My father had cuts on his face, they had tied him with a black nylon, I said "why did they tie him if he wasn't bad?" I stayed with him, crying, for three hours until they took me away. I could not believe it, he was very good, he helped people who had nothing to eat […]. They killed him because supposedly he collaborated with the guerrilla forces. We were going to take him out but they didn't let us. The paramilitary said that where they killed someone, that person remained there […]. [FN208]

b) Maryuri Caicedo Contreras:

When we turned around I asked where my father and brothers were, they were no longer behind us. People came out of their houses and cried, they told my mother not to go back because they could kill her and her children. My mother cried, we began to look for them, we went to look for them by the river. I saw people who had been thrown into the river, I saw some people only the body, with no hands, no body, no head. We looked everywhere and could not find him. [FN209]

c) Nadia Mariana Valencia Sanmiguel:

According to some people, my father was decapitated, they played soccer with my father's head, and his head was ten meters from his body.[…] I only saw one of my father's legs as he was taken by in a pick-up truck. [FN210]

d) Mariela Contreras Cruz:

[T]here are a lot of missing people and [for] this reason they did not find the bodies, only parts, and I heard of this through comments by the widows and orphans.[…] there was a woman whom they called Marta and her nickname was the Guajira and she lost all her family, […] and I also know that María Bustos lost her two brothers […]. People said that the town had been emptied[, that] they finished everyone off. [FN211]

[FN208] See statement rendered as testimony before a notary public (affidavit) by Carmen Johanna Jaramillo Giraldo on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4540).

[FN209] See sworn statement rendered by witness Maryuri Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, page 4569)

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[FN210] See statement rendered as testimony before a notary public (affidavit) by Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, pages 4535 and 4536).
[FN211] See statement by Mariela Contreras Cruz, rendered before the 21st Notary Public's Office of the Circuit of Bogotá, on December 22, 2003 (file with appendixes to the brief containing pleadings and motions, appendix 69, page 4177).
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143. After the facts of July 1997, most of the population of Mapiripán left the town; many of the next of kin were forced into internal displacement in Colombia and, since then, many of them have suffered very bad living conditions (supra para. 96.63 and infra paras. 169 to 189). The facts in this case have generated a deep state of fear, anguish and powerlessness among the next of kin of the victims, which has not allowed them to return to Mapiripán, to file complaints before the authorities regarding the facts, and to participate in the domestic proceedings. This is demonstrated by the fact that only one of the next of kin has, according to the records, been involved in the criminal proceeding as a civil party and that only the next of kin of four executed or missing victims have begun administrative-law proceedings. Said situation has been decisive, also, in the fact it has only been possible to identify the next of kin of some of the victims of the massacre.

144. The next of kin of the victims have suffered damage due to the latter's disappearance and execution, due to lack of support by State authorities in the search for those missing and the fear to begin or continue the search for their next of kin in face of possible threats. Since most of the victims are missing, the next of kin have not been able to adequately honor their deceased beloved ones. All the above, in addition to affecting their physical and psychological wellbeing, has had an impact on their social and work relations, has altered their family dynamics and, in some cases, has placed the lives and the right to humane treatment of some of their members at risk. (supra paras. 96.141, 96.145 and 96.175).

145. In the instant case, there has not been a complete and effective investigation of the facts of July 1997, as will be analyzed in this chapter and in the section on Articles 8 and 25 of the American Convention (infra paras. 195 to 241). In other cases, said lack of effective remedies has been considered by the Court to be a source of additional suffering and anguish for the victims and their next of kin. [FN212] Due to partial impunity, the next of kin have suffered deep anxiety regarding the possibility of facing hostile actions if they return to Mapiripán.

[FN212] See Case of the Moiwana Community, supra note 4, para. 94, and Case of the Serrano Cruz Sisters, supra note 11, paras. 113 to 115.
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146. Beyond the above, in a case such as that of the Mapiripán Massacre, the Court deems that no evidence is required to prove the grave impact on the mental and emotional well-being of the next of kin of the victims. Furthermore, the fact that the very circumstances of the case have not allowed the national authorities, as well as this Court, to have more information on other next of kin of the victims, makes it reasonable to presume that all of these, whether identified or not,

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suffered the extreme circumstances of the massacre or its consequences. Thus, the Court deems that the next of kin of the victims individually identified in this proceeding (supra paras. 96.137 to 96.173), as well as those who have not been identified, must also be considered victims of the abridgment of the right to humane treatment, embodied in Article 5(1) and 5(2) of the Convention, in combination with Article 1(1) of said treaty.

XI. ARTICLE 19 OF THE AMERICAN CONVENTION IN COMBINATION WITH ARTICLES 4(1), 5(1), 22(1) AND 1(1) OF THAT CONVENTION (RIGHTS OF THE CHILD)

Pleadings of the Commission

147. The Inter-American Commission did not allege violation of Article 19 of the American Convention in the application. However, in its final pleadings the Commission pointed out that "the facts acknowledged by the State substantiate both its international responsibility for the violation of Articles 4(1), 5(1) and (2) and 7 (1) and (2) of the American Convention to the detriment of approximately 49 fatal victims […] and for lack of due judicial elucidation of the facts, reparation of their effects, and consequent abridgment of Articles 8(1), 19, 22, 25 and especially 1(1), which are still part of the dispute."

Pleadings of the representatives:

148. With regard to Article 19 of the American Convention the representatives pointed out that:

a) the protection measures that minors require of their family, of society and of the State must be ensured with no discrimination and must be applied more efficiently in cases in which the children are in an additional situation of vulnerability. Furthermore, the scope of said protection measures must be understood comprehensively, and it requires both positive and negative obligations by the State;
b) in accordance with the American Convention, as well as with other international instruments, the State has the obligation to adopt special measures for children in armed conflicts. In the instant case it did not do so, as minors Hugo Fernando Martínez Contreras and Diego Armando Martínez Contreras required special protection. At the time of the facts they were doubly vulnerable because of their situation as children and because they found themselves in the midst of an armed conflict;
c) the agents acted deliberately when the children were taken and when they did not take any steps to return them to their families;
d) of the 19 next of kin mentioned in this proceeding, 9 were minors at the time of the facts. These children's development has been seriously affected by their displacement, by having to stop schooling to begin to work or to care for their younger siblings, or by having to separate from their families to study, by undergoing hunger, by lack of medical care or adequate housing, among other situations, which constitute violations of the rights of the child. In accordance with the Convention, as well as with other international instruments, the State has the obligation to take special measures for children. Colombia did not fulfill this duty, as it did not prevent the displacement, it did not protect the children during the displacement, it did not provide adequate

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humanitarian assistance, it did not ensure their return, resettlement or reinsertion under dignified and safe conditions; and

e) to date the victims live in fear and in extremely precarious situations. Despite the duties of the State vis-à-vis this group of women and children, the families have not attained the dignity and security that they enjoyed before the massacre and the displacement.

Pleadings of the State

149. The State did not refer to Article 19 of the American Convention.

Considerations of the Court

150. Article 19 of the American Convention establishes that

[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

151. The representatives argued that the State had abridged Article 19 of the Convention, which is not part of the acknowledgment by the State. In the instant case, minors Hugo Fernando and Diego Armando Martínez Contreras were executed in the massacre and others witnessed it. Furthermore, many of the displaced next of kin of the victims were children at the time of the facts and when they suffered the consequences of forced domestic displacement.

152. The Court deems that cases in which the victims of human rights violations are children are especially grave, as they "also [have] special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State." [FN213] Article 19 of the American Convention must be understood as a complementary right established by the treaty for human beings who due to their physical and emotional development require special protection measures. [FN214] The principle of their higher interests, based on the very dignity of the human being, on the characteristics of children themselves, and "on the need to foster their development, making full use of their potential" applies in this regard. [FN215]

[FN213] See Legal Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54. Likewise, Case of the "Juvenile Reeducation Institute", supra note 4, para. 147.

[FN214] See Case of the "Juvenile Reeducation Institute", supra note 4, para. 147; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 164, and Legal Status and Human Rights of the Child, Advisory Opinion OC-17/02, supra note 213, para. 54.

[FN215] See Legal Status and Human Rights of the Child, Advisory Opinion OC-17/02, supra note 213, para. 56, and Case of Bulacio, supra note 193, para. 134.

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153. The content and scope of Article 19 of the American Convention must be specified, in cases such as the instant one, taking into account the pertinent provisions of the Convention on the Rights of the Child, [FN216] especially its Articles 6, 37, 38 and 39, and of Protocol II to the

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Geneva Conventions, as these instruments and the American Convention are part of a very comprehensive international corpus juris for protection of children, which the States must respect. [FN217] Together with the above, applying Article 29 of the Convention, it is appropriate to consider the provisions set forth in Article 44 of the Political Constitution of the Republic of Colombia. [FN218] In this regard, the Constitutional Court of Colombia has pointed out that

Number 3 Article 4 of [Protocol II] grants privileged treatment to children, with the aim of providing them with the care and support they need, especially with regard to education and family unity. It also points out that minors under 15 will not be recruited by armed forces or groups and will not be allowed to participate in the hostilities. The Court deems that said special protection to children is fully in harmony with the Constitution, because not only are they in a clearly weak situation (PC Art. 13) in armed conflicts but the constitution also assigns the highest priority to the rights of children (PC Art. 44) […] [FN219].

[FN216] Ratified by Colombia on January 28, 1991, and which entered into force on February 27, 1991.
[FN217] See Case of the "Juvenile Reeducation Institute", supra note 4, para. 148; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 166; Case of the "Street Children."(Villagrán Morales et al.), supra note 190, para. 194, and Legal Status and Human Rights of the Child, Advisory Opinion OC-17/02, supra note 213, para. 24.
[FN218] See Article 44 of the Constitution of the Republic of Colombia:
"These are basic rights of children: life, physical integrity, health and social security, a balanced diet, their name and nationality, having a family and not being separated from it, care and love, education and culture, recreation and free expression of their opinions. They will be protected against all forms of abandonment, physical or moral violence, kidnapping, sale, sexual abuse, economic or work-related exploitation and risky work. They will also enjoy all the other rights enshrined in the Constitution, in the Law and in the international treaties ratified by Colombia.
Families, society and the State have the obligation to provide assistance and protection to children to ensure their harmonious and comprehensive development and full exercise of their rights. Every person may demand compliance with this from competent authorities and punishment for those who do not."
[FN219] See judgment C-225/95 of May 18, 1995, issued by the Constitutional Court, para. 37.
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154. Likewise, Articles 38 and 39 of the Convention on the Rights of the Child provide that:

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child. […]
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

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States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

155. The Court deems it necessary to call attention to the specific consequences of the brutality with which the acts were committed for the boys and girls in the instant case, in which, inter alia, they have been victims of violence in a situation of armed conflict, they have been partially orphaned, they have been displaced and their physical and psychological integrity has been damaged.

156. The special vulnerability of boys and girls due to their condition as such becomes even more evident in a situation of domestic armed conflict, as in the instant case, since they are least prepared to adapt or respond to said situation and, sadly, it is they who suffer its abuse in a disproportionate manner. The Court, citing the II World Conference on Human Rights, has deemed that

[n]ational and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, […] refugee and displaced children, [and] children in armed conflict […]. [FN220]

[FN220] See Legal Status and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 213, para. 82.

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157. Likewise, the United Nations High Commissioner for Human Rights has stated that, "Colombian children suffer the consequences of the domestic armed conflict more severely." [FN221] The United Nations Committee on the Rights of the Child, in turn, has stated its concern because "the direct effects of the armed conflict [in Colombia] have very important negative consequences on the development of children and they severely obstruct exercise of many of the rights of the majority [of them] in the State Party." [FN222] Specifically, the armed conflict constitutes a "threat […] to the life of children, including extralegal executions, disappearances and tortures committed by […]paramilitary groups." [FN223] Likewise, the Special Representative of the Secretary General of the United Nations in charge of the issue of children in armed conflicts has deemed that boys and girls who have been exposed to "violence and killing, displacement, rape or the loss of beloved ones carry with them the scars of fear and hatred." [FN224]

[FN221] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2001/15, March 20, 2001 (file with appendixes to the brief containing pleadings and motions, appendix 39, page 3617).

[FN222] See Final Observations by the Committee on the Rights of the Child: Colombia, 16/10/2000, CRC/C/15/Add.137, 25th session, Committee on the Rights of the Child, para. 10.

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[FN223] See Final Observations by the Committee on the Rights of the Child: Colombia, 16/10/2000, supra note 224, para. 34.
[FN224] See Report by the Special Representative of the Secretary General in charge of the issue of children in armed conflicts. United Nations General Assembly Doc. A/54/430 of October 1, 1999, para. 25.
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158. The Court notes that the specific facts of the instant case that have affected boys and girls demonstrate their lack of protection before, during and after the massacre.

159. First of all, the State was fully aware that the region where Mapiripán is located is one where there are high degrees of violence within the framework of the domestic armed conflict (supra para. 96.23), despite which it did not protect the population of Mapiripán, especially its boys and girls.

160. On the other hand, as was established (supra paras. 96.36 and 96.55), the violence unleashed during the Mapiripán Massacre affected the boys and girls of that town in an especially intense manner: many of them saw how their next of kin –mostly their fathers– were taken away, they heard them cry for help, they saw remains of bodies thrown around, their throats slit or decapitated and, in certain cases, they knew what the paramilitary had done to their next of kin. Furthermore, during the massacre minors Hugo Fernando and Diego Armando Martínez Contreras, 16 and 15 years old respectively, were executed or made to disappear (supra para. 96.40), and there are statements by witnesses of the facts who refer to unidentified children who were executed, including some just a few months old (supra paras. 75.l) and 96.52). The file also shows that minors Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras and Maryuri Caicedo Contreras were threatened by the paramilitary when they tried to follow or seek their next of kin during the days of the massacre. In this regard, Gustavo Caicedo Contreras, 7 years old at the time of the facts, stated that "[the paramilitary] did not care whether they were children or babies, they took them away just for asking about their relative […]." [FN225]

[FN225] See sworn statement rendered by witness Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, page 4566).
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161. After the Mapiripán Massacre, many families left the town and most have not returned. As explained in the respective chapter, the boys and girls, when they were displaced –specifically Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras and the Valencia Sanmiguel siblings, that is, Nadia Mariana Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber–, suffered conditions such as separation from their families, leaving behind their belongings and their homes, rejection, hunger and cold. For example, then minor Carmen Johanna Jaramillo Giraldo was threatened by the paramilitary after the massacre (supra para. 96.141). Gustavo Caicedo Contreras, in turn, who was 7 years old at the time of the facts, stated that he has felt rejected "because when he was in Bogotá people looked at him […] strangely because he was a displaced person." [FN226] Also, some of the displaced boys and girls had to live in "houses" made out of

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tin and plastic, and were in charge of their younger siblings, because their mothers had to find jobs to ensure family sustenance. In this regard, Johanna Marina Valencia Sanmiguel, 8 years old at the time of the facts, stated:

We went hungry and my mother had to work to get food. I had to start taking care of my brothers since I was eight. I have a brother with special needs and I had to bottle-feed him and clean him. I also had to cook […]. [FN227]

[FN226] See sworn statement rendered by witness Gustavo Caicedo Contreras on February 16, 2005 (file with statements rendered before or authenticated by a notary public, page 4567).
[FN227] See sworn statement rendered by witness Johanna Marina Valencia Sanmiguel on February 16, 2005 (file with statements rendered before or authenticated by a notary public, page 4577).

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162. The obligation of the State to respect the right to life of every person under its jurisdiction takes on special aspects in the case of children, and it becomes an obligation to "prevent situations that might lead, by action or omission, to breach it." [FN228] In the sub judice case, the massacre and its consequences created a climate of constant tension and violence that affected the right of the boys and girls of Mapiripán to a decent life. Therefore, the Court deems that the State did not create the conditions and did not take the necessary steps for the boys and girls of the instant case to have and develop a decent life, but rather exposed them to a climate of violence and insecurity.

[FN228] See Case of the Gómez Paquiyauri Brothers, supra note 182, paras. 124 and 171, and Case of Bulacio, supra note 193, para. 138.

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163. As a consequence of the lack of protection of the boys and girls by the State, before, during and after the massacre, the Court finds that the State violated Article 19 of the American Convention, in combination with Articles 4(1), 5(1) and 1(1) of that convention, to the detriment of Hugo Fernando and Diego Armando Martínez Contreras, Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, and the Valencia Sanmiguel siblings, that is, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber. The State also breached Article 19 of the American Convention, in combination with Articles 22(1), 4(1) and 1(1) of that Convention, to the detriment of the boys and girls displaced from Mapiripán, of whom the following have been individually identified in this proceeding: Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras and the Valencia Sanmiguel siblings, that is, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber.

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XII. INTERNAL DISPLACEMENT OF THE NEXT OF KIN OF THE VICTIMS (ARTICLE 22(1) OF THE AMERICAN CONVENTION IN COMBINATION WITH ARTICLES 4(1), 5(1), 19 AND 1(1) OF THAT CONVENTION)

Pleadings of the Commission

164. The Inter-American Commission did not allege violation of Article 22(1) of the American Convention in the application, but it referred to the situation of displacement faced by the next of kin of the victims, in its pleadings on the abridgment of Articles 5, 8(1) and 25 of the Convention. Nevertheless, in its final written pleadings it pointed out that "the facts acknowledged by the State substantiate its international responsibility both for the violation of Articles 4(1), 5(1) and (2) and 7 (1) and (2) of the American Convention to the detriment of approximately 49 fatal victims […] and for lack of due judicial elucidation of the facts, reparation of their effects, and consequent abridgment of Articles 8(1), 19, 22, 25 and especially 1(1), which are still part of the dispute."

Pleadings of the representatives

165. The representatives argued that, in view of the domestic displacement forced upon the next of kin of the victims that they represent, the State is responsible for violating Article 22(1) of the American Convention. They specifically based their request on the following reasons:

a) the rights of movement and of residence of the alleged victims and their next of kin were breached in three ways:

i. during the days when the paramilitary occupied Mapiripán, they kept the inhabitants imprisoned in their houses while they carried out their plan of detention, torture, murders and disappearances; furthermore, the State did not take steps to rescue the victims of the massacre or their next of kin;

ii. due to the massacre and the State's inaction, all the next of kin of the alleged victims were forced into displacement. The residents of the town had to abandon their homes, their jobs and their community, and were displaced. The population of Mapiripán declined from roughly 3000 individuals to approximately 135 families;

iii. six years after the massacre, the State has not ensured the necessary security conditions, given the public order situation in Mapiripán, for the next of kin of the alleged victims to return to their homes, thus breaching these persons' right to choose their place of residence;

b) when they left their town, the next of kin of Sinaí Blanco Santamaría, José Rolan Valencia, Antonio María Barrera, Jaime Riaño Colorado, Enrique Pinzón López, Jorge Pinzón López, Luis Eduardo Pinzón López, José Alberto Pinzón López, Fernando Martínez Contreras, Diego Martínez Contreras, and Gustavo Caicedo Rodríguez lost their houses, belongings, lands, harvests, studies, friendships, and relationships;

c) despite its international obligations (United Nations Guiding Principles on Internal Displacement) as well as its national obligations (Law 387 of 1997), the State took no steps to prevent displacement of the residents of Mapiripán. The objective of the massacre was precisely to "spread panic among the population" and, therefore, forced displacement of the townspeople was an expected consequence;

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e) after the facts the women became the heads of families, struggling to survive the threats and harassment, stigmatization, unemployment, hunger, family separation, lack of access to health services and education, housing, among other situations that they faced as displaced persons;
f) of the 19 next of kin mentioned in this proceeding, 9 were minors at the time of the facts. These children's development was severely affected by their displacement, as they had to stop studying to begin to work or care for their younger siblings or to separate from the family to study, they went hungry, lacked medical care or an adequate house, among other situations that constitute violations of the rights of the child. Colombia did not fulfill its duty to protect the boys and girls by not preventing their displacement, by not protecting them while in that situation, by not granting them adequate humanitarian assistance, and by not ensuring their return, resettlement or reintegration under decent and safe conditions. The feelings of family disintegration, insecurity, frustration, anguish and powerlessness generated by forced displacement constitute a violation of the right to humane treatment; and
g) to date, the victims live with fear in extremely precarious situations. Despite the duties of the State with regard to this group of women and children, the families have not attained the dignity and security that they enjoyed before the massacre and the displacement.

Pleadings of the State

166. While the State did not refer to the alleged violation of Article 22(1) of the Convention, alleged by the representatives, it pointed out that there have been "security councils" constantly at the office of the Mayor of Mapiripán with the aim of addressing the public order situation and analyzing the problem of forced displacement and taking steps to address this phenomenon. Furthermore, the "Local Contingency Plan for Prevention of Displacement of the Population by Violence" was adopted, as a set of programs, tools and actions that seek to attenuate and/or address the basic needs of the displaced population.

Considerations of the Court

167. Paragraphs 1 and 4 of Article 22 of the American Convention establish that:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
[…]
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest. […]

168. This Court has pointed out that freedom of movement is an indispensable condition for free development of each person. [FN229] The Court has concurred with the conclusion of the United Nations Human Rights Committee, in its General Comment No. 27, where it establishes that freedom of movement and of residence consist, inter alia, of the following: a) the right of those lawfully in the territory of a State to move about freely in that State and to choose their place of residence; and b) the right of each person to enter their country and remain in it. Enjoyment of this right does not depend on any specific objective or motive of the person who wishes to move about or to remain in a certain place. [FN230]

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[FN229] See Case of the Moiwana Community, supra note 4, para. 110, and Case of Ricardo Canese, supra note 185, para. 115.

[FN230] See Case of the Moiwana Community, supra note 4, para. 110, and Case of Ricardo Canese, supra note 185, para. 115. United Nations Human Rights Committee, General Comment no. 27 of November 2, 1999, paras. 1, 4, 5 and 19.

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169. In the instant case, the representatives argued that the State breached Article 22(1) of the Convention to the detriment of the next of kin of the victims they represent, due to the domestic displacement they were forced to suffer. Based on the facts acknowledged by the State, the Court does in fact find that the freedom of movement of the families of the victims was curtailed while the paramilitary remained in Mapiripán during the facts of July 1997 (supra para. 96.35). Furthermore, it has been proven that many of the next of kin of the victims in Mapiripán were forced into displacement after the massacre (supra paras. 96.63 and 96.64). However, based on the circumstances of the instant case and given the complex situation of vulnerability that affects persons who suffer the phenomenon of forced internal displacement, the Court finds it necessary to analyze the dynamics of said phenomenon in the specific context of Colombia's domestic armed conflict, before establishing whether in the instant case the State breached the Convention to the detriment of the next of kin due to this situation.

170. In the recent Case of the Moiwana Community v. Suriname, this Court deemed that, notwithstanding the existence of legislation on the matter by the respondent State, the freedom of movement and residence of the members of the Moiwana community who were displaced was limited by a de facto restriction stemming from the fear they felt for their security and from the fact that the State had not conducted a criminal investigation, which kept them away from their ancestral territory. The Court pointed out that the State had not established the necessary conditions or provided the means required to enable the members of the community to return voluntarily, safely and with dignity, to their traditional lands. Furthermore, the State had not conducted an effective criminal investigation to end the impunity prevailing in the case, a situation that did not allow them to return. This set of facts denied the members of the community who had been displaced within the territory of the State, as well as those who were in exile in French Guiana, their rights to freedom of movement and of residence, for which reason the Court found the State responsible for abridgment of Article 22 of the Convention to the detriment of the members of that community. [FN231]

[FN231] See Case of the Moiwana Community, supra note 4, paras. 107 to 121; likewise see Case of Ricardo Canese, supra note 185, paras. 113 to 120.

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171. The Court deems that to define the content and scope of Article 22 of the Convention in a context of domestic displacement, the content of the Guiding Principles on Internal Displacement issued in 1998 by the Representative of the Secretary General of the United Nations is especially significant. [FN232]

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[FN232] See United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. Also see Case of the Moiwana Community, supra note 4, paras. 113 to 120.

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172. Furthermore, the regulations on displacement included in Protocol II to the 1949 Geneva Conventions are also especially useful to apply the American Convention to the situation of domestic armed conflict in Colombia. Specifically, Article 17 of Protocol II prohibits ordering the displacement of civilian population for reasons related to the conflict, unless this is required by the safety of civilians or for imperative military reasons, and in the latter case "all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." In this regard, in a 1995 judgment, the Constitutional Court of Colombia deemed that "in the Colombian case, application of these rules by the parties in conflict is also especially imperative and important, because the country's armed conflict has severely affected the civilian population, as shown by the alarming data on forced displacement of persons." [FN233]

[FN233] See judgment C-225/95 of May 18, 1995, issued by Constitutional Court, para. 33.

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173. The facts of the instant case are set within a widespread situation of forced internal displacement in Colombia, caused by the domestic armed conflict. As pointed out above, this problem, which current dynamics began in the 1980s, has been worsening and currently affects a population of 1.5 to 3 million displaced persons (supra para. 96.57).

174. The Court notes that the phenomenon of internal displacement and its consequences have been widely analyzed from various standpoints. Recently, the Constitutional Court of Colombia issued a comprehensive ruling in which it addressed the actions for protection of constitutional rights filed by 1150 displaced families, primarily female heads of households, elderly people, and minors, as well as some indigenous families. In this judgment, it referred to said situation of vulnerability of the displaced population as follows:

[…] due to the circumstances of internal displacement, those persons […] who are forced to "abruptly leave their place of residence and their customary economic activities, having to migrate elsewhere within the national territory" to flee the violence stemming from the domestic armed conflict and due to systematic disregard for human rights or for international humanitarian law, they are subject to a much higher level of vulnerability, which entails a grave, massive and systematic violation of their basic rights and, therefore, the authorities should pay special attention to it: "Persons displaced by violence are in a situation of weakness that merits special treatment by the State." Along these same lines, the Court has asserted "the need to direct the State's political agenda toward solving the problem of internal displacement and the duty of giving it a higher priority than many other issues on the public agenda," given the decisive

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impact of this phenomenon on national life, due to its scale and its psychological, political and socio-economic consequences. [FN234]

[FN234] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, pages 5153 and 5154).

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175. The reasons for and expressions of the acute vulnerability of displaced persons have been characterized from various perspectives. Said vulnerability is reinforced by their rural origin and, in general, it especially affects women -who are heads of households and constitute more than half the displaced population-, girls and boys, youths, and elderly persons. The internal displacement crisis, in turn, generates a security crisis, since the domestically displaced groups become a new focus or resource for recruitment by the paramilitary groups, drug traffickers, and guerrilla forces. [FN235] In most cases, the minimum conditions required by the displaced population to return to their homes, in terms of security and dignity for them, are lacking, [FN236] and the significant negative effects of resettlement caused by forced internal displacement, in addition to its grave psychological repercussions for them, include: (i) loss of the land and of their houses, (ii) marginalization, (iii) loss of the household, (iv) unemployment, (v) deterioration of living conditions, (vi) more illness and higher mortality, (vii) loss of access to common property among the members of communities [comuneros], (viii) food insecurity, and (ix) social disintegration, as well as impoverishment and accelerated deterioration of living conditions (supra para. 96.59).

[FN235] See Economic and Social Council, Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this regard, E/CN.4/2005/48, March 3, 2005, para. 38.
[FN236] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, February 24, 2003, para. 94 (file with appendixes to the brief containing pleadings and motions, appendix 41, page 3717).

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176. The Constitutional Court of Colombia established, in the aforementioned judgment (supra para. 174), that the humanitarian crisis caused by the phenomenon of internal displacement is of such magnitude and is a matter of such concern that it can be described as a "true state of social emergency"; "a national tragedy that affects the fate of vast numbers of Colombians and which is leaving its mark on the future of the country for the coming decades" and "a serious danger for the Colombian polity." It established that said phenomenon entails a "massive, protracted, and systematic violation" of a broad set of basic rights, which content it interpreted in light of the Guiding Principles on Forced Displacement. [FN237]

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[FN237] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, pages 5153 to 5162).

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177. In view of the complexity of the phenomenon of internal displacement and of the broad range of human rights affected or endangered by it, and bearing in mind said circumstances of special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights, their situation can be understood as an individual de facto situation of lack of protection with regard to the rest of those who are in similar situations. This condition of vulnerability has a social dimension, in the specific historical context of the domestic armed conflict in Colombia, and it leads to the establishment of differences in access of displaced persons to public resources managed by the State. Said condition is reproduced by cultural prejudices that hinder the integration of the displaced population in society and that can lead to impunity regarding the human rights violations against them.

178. With regard to this situation of inequality, it is pertinent to recall that there is an unbreakable tie between the erga omnes obligations to respect and guarantee human rights and the principle of equality and non-discrimination, which has the nature of jus cogens and is crucial to safeguard human rights both under international law and under domestic venue, and which impregnates all actions by State power, in all its expressions. To comply with said obligations, States must abstain from carrying out actions that in any way, directly or indirectly, create situations of de jure or de facto discrimination, and they must also take positive steps to revert or change existing discriminatory situations in their societies, to the detriment of a given group of persons. This entails the special duty of protection that the State must provide in connection with actions and practices of third parties who, under its tolerance or acquiescence, create, maintain or foster discriminatory situations. [FN238]

[FN238] See Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC 18/03, supra note 190, paras. 86 to 105.

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179. Under the terms of the American Convention, the differentiated situation of displaced persons places States under the obligation to give them preferential treatment and to take positive steps to revert the effects of said condition of weakness, vulnerability, and defenselessness, including those vis-à-vis actions and practices of private third parties.

180. In the instant case, the characteristics of the massacre in Mapiripán, the experiences of the days of the massacre, the damage suffered by the families, together with the fear of the next of kin that similar events might happen again, the intimidation and threats against some of them by paramilitary, as well as of rendering their testimony or for having rendered it, led to the internal displacement of many families from Mapiripán. It is possible that some of the displaced next of kin did not live in Mapiripán at the time of the facts but rather in areas nearby, but they were also forced into displacement as a consequence of the facts. As the testimony itself shows,

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many of these persons have faced grave conditions of poverty and lack of access to many basic services; for example:

Zuli Herrera Contreras stated:

My mother was shattered, she lost everything in one moment, the smaller children cried for their father, for their brothers, and they asked about them all the time. […] [In Bogotá] we built a tin and plastic hut. It was very difficult, my spouse did not have a job, and I did not have one either. There were days in which my children had to drink from the tank to calm their hunger. It was very hard when the children asked for food and we had none to give them. [FN239]

Yur Mary Herrera Contreras expressed:

[My relatives h]ad to leave everything in Mapiripán, they had to go from one farm to another […]. During those three years I had no news from them, I was very frightened. [FN240]

[FN239] See statement rendered as testimony before a notary public (affidavit) by Zuli Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4530).
[FN240] See statement rendered as testimony before a notary public (affidavit) by Yur Mary Herrera Contreras on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4524).

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181. Some of the next of kin of the victims – true survivors of the massacre – are convinced that they cannot return to Mapiripán until they obtain justice regarding the facts of the massacre. Several of them have also stated their deep concern regarding the possibility of suffering new aggressions if they return to Mapiripán, which is located in an area of paramilitary presence (supra paras. 75.a) and 76.f)). In other words, their right to personal security is abridged by the situation of displacement, both due to the situation they have faced and because they have not been provided with the necessary conditions to return to Mapiripán, if they wished to do so.

182. The Court must emphasize that Colombia, to address the situation of domestic displacement, which is one of the greatest problems caused by the conflict, has taken a number of legislative, administrative and judicial steps, including multiple laws, decrees, documents of the Consejo Nacional de Política Económica y Social (CONPES), presidential orders and directives. One of these noteworthy measures is Law N° 387 of July 18, 1997, which defines the concept of displaced persons and grants those who are in that situation a special legal status. A great variety of public policies have also been developed in connection with the problem of displacement, including production programs, alliances with the private sector and various support programs (supra para. 96.61). Nevertheless, the Constitutional Court of Colombia itself, when it decided on the aforementioned actions for constitutional protection of rights, asserted "the existence of an unconstitutional state of affairs regarding the situation of the displaced population due to the lack of accord between the gravity of the detriment to the constitutionally recognized rights, developed in the Law, on the one hand, and the amount of resources

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effectively allocated to ensuring the effective exercise of said rights and the institutional ability to implement the respective constitutional and legal mandates, on the other hand." [FN241] Specifically, it found that despite the actions carried out by certain State agencies to mitigate the problems of the displaced population and the important progress attained, it has not been possible to comprehensively protect the rights of the displaced population or to counteract the grave deterioration of their conditions of vulnerability, primarily due to the precariousness of institutional capacity to implement State policies and due to insufficient resource allocation. [FN242]

[FN241] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, page 5163).
[FN242] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, pages 5166 to 5174).

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183. In the instant case, some of the next of kin displaced from Mapiripán have been identified in the proceeding before this Court. In this regard, the Court decided in this Judgment that non-identification of all the next of kin of the victims is due to the very circumstances of the massacre and to the deep fear they have suffered (supra paras. 96.47, 96.174 and 140 to 146). This same dynamics has made it impossible to know exactly how many next of kin were displaced in this case, for which reason the Court can only assess this situation with regard to those who have proven their situation in this proceeding. Nevertheless, the Court states its deep concern regarding the fact that there were possibly many other persons who faced that situation and were not identified in the proceeding before the Court.

184. The Court also appreciates the fact that some of the next of kin of the victims who have been identified, that is: Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo Giraldo, Luz Mery Pinzón López, the family of Mariela Contreras Cruz and the Valencia Sanmiguel family, have received help or support from the State due to their situation as displaced persons (supra para. 96.65).

185. On the other hand, the representatives reported at the end of the proceeding that there are at least 10 lawsuits "filed by next of kin of victims regarding the facts in Mapiripán, which are being processed under administrative law," as well as information on displaced persons "not represented by the Colectivo de Abogados ["José Alvear Restrepo"] before the administrative law courts in Colombia, and it [has] learned that they have received humanitarian aid due to the facts in Mapiripán". The Court does not know the reasons why the representatives only informed the Court of these other administrative-law proceedings at the end of the proceeding before this Court, even though based on the information supplied, most of them apparently began in 1999. The representatives did not explain, either, the reasons why they did not represent those persons who are allegedly next of kin of victims of the massacre. On the other hand, the statements of witnesses under domestic venue provide the names of other persons who apparently were also displaced as a consequence of the facts, such as Jesús Antonio Morales, Nery Alfonso Ortiz, Ana

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Betulia Alfonso, Luz Helena Molina, Ana Tulia Agudelo, Norberto Cortés, Margarita Franco Ramírez and Leonardo Iván Cortés Novoa. Furthermore, as evidence requested by the Court to facilitate adjudication, the State submitted a list of approximately 400 persons who have been displaced from Mapiripán, in which it does not specify who are next of kin of victims of the massacre. Lacking this information, the Court has not referred to these other persons as next of kin of victims or as displaced persons and said situation will not be taken into account in this chapter, without detriment to their being able to claim their rights before the national authorities.

186. In conclusion, the Court notes that the situation of forced internal displacement faced by the next of kin of the victims cannot be separated from the other violations found in the instant Judgment. The circumstances of the instant case and the special and complex situation of vulnerability that affects said persons include but also transcend the content of the protection that the States must provide in the framework of Article 22 of the Convention. Displacement of these next of kin in fact originates in the lack of protection during the massacre and reveals its effects in the violations of their right to humane treatment (supra paras. 143, 144 and 146) and in the consequences of non-fulfillment of the duty to investigate the facts, which have led to partial impunity (infra paras. 216 to 240). Furthermore, the Court addressed the violation of Article 19 of said treaty due to lack of protection of those who were children when they were displaced or who are still minors (supra para. 161 to 163). This set of components leads the Court to find that, beyond the provisions of Article 22 of the Convention, the situation of displacement addressed here has also affected the right of the next of kin of the victims to a decent life, [FN243] in connection with non-fulfillment of the obligations to respect and to guarantee the rights embodied in those provisions.

[FN243] See Case of the Indigenous Community Yakye Axa, supra note 12, paras. 162 and 163; Case of the "Juvenile Reeducation Institute", supra note 4, para. 164, and Case of the "Street Children" (Villagrán Morales et al.), supra note 193, para. 191.

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187. In this regard, the Court has pointed out that the terms of an international human rights treaty have an autonomous meaning, for which reason their meaning cannot considered identical to that given to them under domestic law. Furthermore, said human rights treaties are live instruments whose interpretation must adjust to the changing times and, specifically, to current living conditions. [FN244]

[FN244] See The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114. Also see, in adjudicatory cases, Case of the Indigenous Community Yakye Axa, supra note 12, para. 125; Case of the Mayagna (Sumo) Awas Tingni Community, supra note 184, paras. 146 to 148, and Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, paras. 41-44.

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188. Through an evolutive interpretation of Article 22 of the Convention, taking into account the applicable provisions regarding interpretation and in accordance with Article 29.b of the Convention —which forbids a restrictive interpretation of the rights-, this Court deems that Article 22(1) of the Convention protects the right to not be forcefully displaced within a State Party to the Convention. As regards the instant case, this has also been recognized by the Constitutional Court of Colombia when it interpreted the content of the constitutional right to choose a place of residence, "insofar as to flee from the risk to their lives and personal safety, the displaced individuals have had to escape from their customary place of residence and work." [FN245]

[FN245] See judgment T-025/04 of January 22, 2004, issued by the Third Appellate Chamber of the Constitutional Court (file with appendixes to the final pleadings submitted by the representatives, volume I, page 5156).

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189. For the aforementioned reason, the Court finds that Colombia violated Article 22(1) of the American Convention, in combination with Articles 4(1), 5(1), 19 and 1(1) of said treaty, to the detriment of Mariela Contreras Cruz, Rusbel Asdrúbal Martínez Contreras, Maryuri and Gustavo Caicedo Contreras, Zuli Herrera Contreras, Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo Giraldo, Marina Sanmiguel Duarte; Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel; Teresa López de Pinzón and Luz Mery Pinzón López. Of these individuals, at the time of the facts Rusbel Asdrúbal Martínez Contreras, Maryuri and Gustavo Caicedo Contreras, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel, and Carmen Johanna Jaramillo were minors.

XIII. ARTICLES 8(1) AND 25 OF THE AMERICAN CONVENTION IN COMBINATION WITH ARTICLE 1(1) OF THAT CONVENTION (RIGHT TO FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION)

Pleadings of the Commission

190. The Inter-American Commission argued that the State has breached Articles 8(1) and 25 of the American Convention, in combination with Article 1(1) of that convention, because:

a) the State has not fulfilled its obligation to investigate the violations of the right to liberty, to humane treatment and to life, committed against the alleged victims, and to prosecute those responsible;
b) the judicial actions carried out by the State to elucidate the responsibility of civilians and military in committing the massacre do not fulfill the requirements set forth in the American Convention regarding the right to fair trial and to judicial protection;
c) while the investigation by the Office of the Attorney General sheds light on the events, it has not led to effective prosecution of all the civilians and military responsible;
d) while a first instance conviction was issued on June 18, 2003 against five individuals, the facts in this case show that more than 100 individuals participated in the massacre;

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e) despite the scale of the paramilitary incursion in Mapiripán and the degree of collaboration that has been verified, the massacre has not been legally elucidated within a reasonable term, those responsible have not been effectively prosecuted, and the alleged victims have not received reparations;

f) negligence of the State with regard to examination of the circumstances of the massacre breaches the right to fair trial;

g) assigning part of the investigation to military criminal justices breaches the rights to judicial protection and to fair trial. The charges against Brigadier General Humberto Uscátegui Ramírez and Lieutenant Colonel Orozco Castro under military criminal jurisdiction refer only to omissions in connection with their military function and to falsifying a document. The charges of kidnapping for extortion, torture, homicide and constituting paramilitary groups, which had initially been filed under regular justice were set aside by military criminal justice. Having being sentenced to 40 months in prison for the crime of malfeasance of public office by omission, and acquitted of the crime of falsifying a public document, and after spending 16 months in prison, General Uscátegui was released by a decision of the High Military Court. The fact that Brigadier General Uscátegui was tried under military criminal venue deprived the alleged victims and their next of kin of access to an independent and impartial court;

h) when the State allowed the investigations to be conducted by the bodies that were potentially involved, as under military venue, independence and impartiality were clearly compromised. Military jurisdiction is not competent to hear human rights violations as these are not offenses in connection with the military function and this jurisdiction should apply exceptionally and only to function-related crimes committed by members of the Armed Forces;

i) results of the investigation under regular venue were insufficient: of more than two hundred persons involved in committing the acts in the case, only a minimal part of the masterminds and direct perpetrators of the massacre have been included in the investigation: only 15 have been formally included in the investigation; only 8 were tried; only seven have been convicted; only 5 were under detention, 2 of whom benefited from preclusion of the investigation and 3 were released. Several arrest warrants have not been carried out despite the fact that they are frequently in contact with the press and, sometimes, with public officials. Even though arrest warrants have been issued, only 6 out of the 14 persons, whether convicted by trial courts or included in the investigation, are deprived of their liberty in a definitive or preventive manner. The investigation to include the rest of the direct perpetrators of the facts remains open almost eight years after the massacre, which is still in the preliminary investigation phase with regard to most of the participants. All of this has led to impunity;

j) the State has the duty to seriously investigate and punish human rights violations, to prosecute those responsible and to avoid impunity. Said investigation must include full identification of all the victims. The State has been incapable of gathering the essential evidence needed to identify all the victims and to establish their number, despite the existence of indicia and references on their possible identity. The State has not taken the necessary steps to recover the bodies of the alleged victims. These violations impede satisfaction of the right to truth of society as a whole;

k) the next of kin have the right to an effective investigation by the authorities regarding the death of their beloved ones, to a judicial proceeding against those responsible, for them to be punished as appropriate, and to reparations for the damage suffered;

l) administrative-law jurisdiction is, in itself, inadequate to try and punish those responsible and to comprehensively redress the consequences of human rights violations;

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m) the disciplinary proceeding against members of the Army for remiss conduct regarding defense of the population of Mapiripán does not satisfy the requirements set forth in the American Convention regarding the right to judicial protection;
n) as a general rule, a criminal investigation must be conducted promptly to protect the interests of the victims, preserve the evidence and safeguard the rights of all persons who in the context of the investigation are considered suspects. Delays in judicial actions constitute a violation of the duty of the State to elucidate the facts, to try and to punish those responsible for the grave violations committed, in accordance with the standards of reasonable term and the right to effective judicial protection, and they have impeded real exercise by the next of kin of their right to justice and their right to know the truth about what happened to the victims;
o) in cases such as this, the authorities must act ex officio and further the investigation, without depositing this burden on the initiative of the next of kin, who, in the specific context of the criminal acts committed by paramilitary forces in Colombia, when they file complaints regarding the facts suffer constant harassment or are murdered and even their tombs are violated. Despite repeated requests by the civil party, to date the authorities have not included various officers of the Armed Forces and of the police in the investigation, who with their remiss conduct contributed to the massacre being carried out; and
p) the fact that the next of kin of the victims do not have all the necessary guarantees to file complaints regarding the facts under domestic venue, beyond the customary act of keeping identity under seal, not only impedes learning the truth about what is going on in the investigation, but also makes it difficult for them to collaborate or participate in it.

Pleadings of the representatives

191. With regard to Articles 8(1) and 25 of the American Convention, the representatives agree with the pleadings of the Commission in that the State abridged the rights embodied in said provisions, and pointed out that:

a) the investigation of the Mapiripán Massacre was not conducted in an effective and impartial manner. Ineffectiveness of the investigation is shown by non-identification of the alleged victims, destruction of the forensic evidence, negligence of the State regarding measures to protect the witnesses and attorneys involved in the proceeding in addition to non-identification and non-prosecution, non-enforcement of arrest warrants and non-punishment of all the direct perpetrators and masterminds of the facts. The criminal proceeding was conducted in a biased manner to ensure impunity. This is shown by the actions undertaken by State agents to obstruct the investigation and by the fact that the case was partially assigned to military criminal jurisdiction;
b) the authorities did not identify the alleged victims, they did not take the necessary steps to gather and preserve the evidence regarding the executions, they did not identify possible witnesses with the aim of obtaining their statements, and they did not establish the cause, manner, place and time of the executions. As a consequence of inaction by the authorities, almost all the physical evidence of the massacre was lost. Specifically, the authorities did not attempt to obtain control of the scene of the crime, to recover the bodies that were thrown into the river, to gather blood samples, or to take other steps to effectively preserve the physical evidence. Out of approximately 49 persons killed, autopsies were only performed on two corpses. Therefore, the

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case file lacks forensic reports that are crucial for the investigation to be considered and in-depth, prompt and impartial one;

c) the State has not taken the necessary steps to protect the witnesses, victims and attorneys involved in the investigation of the facts. Specifically, attorney Luis Guillermo Pérez was forced to leave the country;

d) interference by the military criminal jurisdiction seriously hindered the investigation and impeded ensuring a suitable recourse before an independent and impartial court. Furthermore, there is a pattern of impunity that cloaks human rights cases investigated by the military criminal jurisdiction;

e) the investigation carried out under regular venue regarding the 49 individuals who were tortured, executed, and made to disappear, reflects a pattern of impunity where a few direct perpetrators are punished to provide appearances of justice while in reality most of the perpetrators remain in a situation of impunity;

f) the investigation has not been conducted within a reasonable term. To date, six years have passed since the order for the regular criminal proceeding to commence, without any individual being definitively convicted and punished. Delays in the instant case are due to the defects and mistakes made by the authorities since the early stages of the investigation, to involvement of the military criminal jurisdiction, and to lack of political disposition to carry out the arrest warrants pending against paramilitary leaders and to investigate high-ranking military officers, among others;

g) the judicial officials have ignored the responsibility of civil and/or military authorities present at times and places that were crucial to planning and implementation of the massacre; they have even refused or arbitrarily delayed execution of orders to commence investigations regarding participation of State agents;

h) for several years, the State disregarded orders to open investigations (e.g. in the case of Carlos Ávila Beltrán) and did not follow-up on evidence in the case file that showed the responsibility of other State agents; and

i) the prospects of justice in this case are scant without the timely intervention of the Court, as there is currently a strong effort by the national government to demobilize the paramilitary without guaranteeing the rights to truth, justice, and reparations. Only fourteen individuals have been formally included in the criminal investigation of the facts; the other direct perpetrators whose identities are unknown might benefit from the demobilization program in the framework of Decree 128 of 2003. Paramilitary leaders like Carlos Castaño might also be pardoned despite their convictions, if a bill submitted in August 2003 is enacted. This bill –which should be studied by the Court- refers to "reinsertion of members of armed groups [outside the Law] who effectively contribute to attaining national peace." The current legal framework for demobilization, as well as that being established, ensures impunity for most of these individuals, by denying the victims of human rights violations access to an effective remedy before competent judges or courts. By allowing those responsible for Mapiripán to receive legal benefits, the Decree constitutes a legal impediment to the investigation.

Pleadings of the State

192. The State argued that it has breached neither Article 8(1) nor Article 25 of the American Convention, asserting that:

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a) it has guaranteed and respected its obligations regarding the alleged victims' right to judicial protection, in compliance with the constitutional and legal principles, as well as international provisions;
b) there is a judicial elucidation of the facts: the first instance judgments issued by the Second Criminal Court of the Specialized Circuit of Bogotá specify the circumstances and type of facts;
c) the jurisdiction has not yet been exhausted and efforts continue to seek all those responsible, whatever their degree as perpetrators. There is no impunity, as those directly responsible for organizing, planning, and directly perpetrating the facts were sentenced to exemplary punishment. The main perpetrator of the violations was brought before justice, investigated, tried, and convicted. It is absurd to disdain said judicial activity because not all the men who, following Castaño's orders or under their own initiative, participated in the facts have teen tried and punished;
d) military criminal justice is an institution of the Constitutional State under the rule of law and the State does not accept judgments that generically and repeatedly disqualify that jurisdiction. To refer to a violation of Article 8 of the Convention in said jurisdiction, it is necessary to analyze the circumstances and procedures in each specific case, rather than generically;
e) non-identification and/or non-recovery of the bodies of all the alleged victims is not due to negligence in the investigations or tolerance by the State regarding elimination of evidence. Instead, the modus operandi in this case included the acts of cruelty and madness described in the files by the witnesses and perpetrators, such as throwing the bodies into the river so as to make the evidence of those acts disappear from the start. The State undertook the criminal and disciplinary investigations with vehemence and conviction to fulfill the juridical obligations required by the rule of law;
f) the next of kin of the alleged victims and their representatives have had at their disposal all the legal means of the juridical system and, furthermore, have exercised them peacefully and with no obstacles, including civil and administrative actions, as well as the action for protection of constitutional rights that led to the ruling of the Constitutional Court that remitted the proceeding against certain military from military criminal justice to regular venue;
g) the State has appropriate jurisdictional instruments for full exercise of the right to fair trial to its full extent. The criminal, disciplinary, and administrative-law proceedings have in fact sought to elucidate the circumstances of the facts in Mapiripán;
h) the criminal facts in "Mapiripán" are part of the agenda of the "Comité de Impulso a las Investigaciones" [committee to further the investigations] under regular venue;
i) in view of the disciplinary rulings, the officials punished were dismissed from their political positions, and cannot hold government positions for at least 20 years, in most cases. Disciplinary jurisdiction, as part of domestic remedies, is exhausted and its rulings have been duly executed. Punishment imposed was proportional to the gravity of the misconduct;
j) there has been a growing and progressive system of State responsibility that in some cases has even led to acceptance of the responsibility of the State independently of any guilt, that is, an objective responsibility. In any case, the system for compensation of damage has evolved in favor of the injured parties, strengthened by joining of responsibility of the official and the administration, so that the injured parties can act against either of them: the legal or natural person;

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k) administrative-law jurisdiction is the appropriate domestic legal instrument to obtain compensation and reparation for human rights violations. However, it has not been possible to resort to administrative law settlement, given the weakness of evidence in the files, because being a requested jurisdiction, the burden of evidence is on the plaintiffs in the proceedings. Some of the next of kin initiated several judicial proceedings seeking to obtain compensation for the property- and non-property-related damage they suffered. It is curious that several of the individuals who participated in the international proceeding, seeking –among other things- compensation, at the time decided not to resort to the generous legal means offered by the domestic legal system for this same purpose. However, by means of settlements, the State has recognized the compensations claimed by the plaintiffs. In the proceeding initiated by Nory Giraldo de Jaramillo, the settlement was unsuccessful due to lack of willingness of the plaintiff to settle, despite a serious proposal by the State;

l) the facts have been elucidated in the domestic proceedings and justice has acted without exceeding reasonable term and without unjustified delay;

m) the February 15, 2005 judgment by the High Court of the Judicial District of Bogotá is final and it exhausts the venue with regard to the persons found liable, without detriment to continuation of the investigations underway and of the international obligation of the State to investigate, prosecute, capture, and punish;

n) reasonable term cannot be understood to refer only to the time and duration of a proceeding; rather, it is necessary to take into account the complexity of the matter, the procedural activity of the interested parties, and conduct of the proceeding by the authorities. The State believes that the five-year term set as a limit of reasonable term in Article 8(1) of the Convention cannot be considered an insurmountable one, because in each case the circumstances and incidents of procedure will show whether the term of the investigations conducted is reasonable;

o) this is a complex case, not only factually, but also juridically. Justice has operated effectively and within a reasonable term, bearing in mind the complexity of the case. In Colombia reasonable term must be examined not only in light of the time invested in an investigation, but also in the context of the functioning of its system for administration of justice, with many difficulties and limitations in terms of financial and technical resources to attain the results sought, in addition to the critical public order situation in the areas where the investigations must be carried out and the evidence obtained;

p) with regard to the procedural activity of the interested parties, only two of the five families that came before the inter-American system resorted to regular justice and have become civil parties and filed their complaints under administrative law. The list does not give the names of the next of kin of the victims at the time of the facts and there was a census of the displaced persons, except for the Valencia Sanmiguel family. Furthermore, neither the domestic nor the international proceedings show that the next of kin of the victims or their representatives were restricted or obstructed in their access to justice or in filing the remedies allowed by domestic legislation;

q) the debate on the competent tribunal is part of due process, for which reason the issue of clash of spheres of competence addresses the implicit guarantees of the right to fair trial and must be taken into account when considering this case. The discussions that it gave rise to and the involvement of the highest courts in the decision on the matter do not constitute an unwarranted delay or a useless procedure with regard to the aims of protection and guarantees in

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the criminal proceeding. Presumption of innocence, inherent to due process, was duly considered by the investigators and judges;

r) the investigations began ex officio and immediately after the facts took place;

s) restorative justice, as it is called, seeks punishment of offenders and reparations for those offended, and especially to restore and repair the social fabric. The Court should help the State move along this path, in the instant case, recognizing that its jurisdictional authorities have complied with internationally accepted standards of truth regarding what happened in Mapiripán; that justice has acted and the main persons responsible for these facts have been convicted and sentenced, and that what is being sought, both under domestic proceedings and before this important venue, are the fair reparations to which the victims are entitled. Despite the complexity and circumstances of the case, including destruction of evidence by the offenders, there was no delay in judicial action; and

t) inclusion of the system of amparo remedies or actions to protect constitutional rights in the legal order should be addressed by the Court in its jurisprudence, recognizing and placing it in the appropriate place in the juridical ambit of the countries that are Parties to the Convention, in accordance with its significant progress and proven efficacy.

Considerations of the Court

193. Article 8(1) of the American Convention establishes:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

194. Article 25 of the Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

195. The Court has asserted that, pursuant to the American Convention, the States Parties are under the obligation to provide effective legal remedies to the victims of human rights violations (Article 25), and these remedies must be substantiated in accordance with the rules of due legal process (Article 8(1)), all of this set within the general obligation of the States themselves to ensure free and full exercise of the rights embodied in the Convention, for all persons under their jurisdiction (Article 1(1)). [FN246]

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[FN246] See Case of the Moiwana Community, supra note 4, para. 142; Case of the Serrano Cruz Sisters, supra note 11, para. 76, and Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 194.

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196. During the proceeding of the case before this Court, the State has argued that it did not breach Articles 8 and 25 of the Convention; it has argued that domestic remedies must be assessed in a comprehensive manner, as the proceedings before criminal justice together with the administrative-law and disciplinary proceedings have effectively enabled attainment of the current results. Both the Commission and the representatives deem that the State has breached said provisions for a number of reasons that include, inter alia, the deficient and incomplete investigations carried out, the time taken by the proceedings, and the lack of effectiveness and results of the latter, which have led to impunity regarding most of those responsible for the massacre.

197. The responsibility of the State has been established for violations of the rights to life, to humane treatment, to personal liberty (supra paras. 130 to 146), to the rights of the child and to freedom of movement and residence (supra paras. 151 to 163, and 168 to 189) to the detriment of the victims of the Mapiripán Massacre and their next of kin, committed by paramilitary groups with the collaboration, by action and omission, of agents of the State. The facts demonstrate the extralegal execution of approximately 49 victims.

198. The Court has verified that criminal proceedings were opened before criminal military and regular courts, as well as administrative-law proceedings and disciplinary proceedings, in connection with the facts of the instant case (supra paras. 96.68 to 96.136). The Court will consider those domestic proceedings that are significant in the instant case, with the aim of establishing whether there has been a violation of the provisions of the Convention regarding the right to judicial protection and to due process. [FN247]

[FN247] See Case of the Moiwana Community, supra note 4, para. 143; Case of the Serrano Cruz Sisters, supra note 11, paras. 57 to 58, and Case of Lori Berenson Mejía, supra note 13, para. 133.

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a) Actions by the criminal military jurisdiction

199. Since April 20, 1999, in response to a request addressed by the Attorney General's Office to the Regional Public Prosecutor in charge of the proceeding, and then in connection with other requests by the Public Prosecutor's Office, there were attempts for a part of the investigations regarding the facts that took place in Mapiripán to be heard under criminal military jurisdiction (supra para. 96.85). On June 2, 1999 the Commander of the Army, as first instance military judge, filed a "positive clash of spheres of competence" before the Human Rights Unit, for the case to be transferred to military jurisdiction (supra para. 96.90). After several rulings of said Human Rights Unit and several appeals, on August 18, 1999 the High Council of the Judiciary decided that criminal military courts would hear the criminal investigation against Brigadier

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General Jaime Humberto Uscátegui Ramírez and against Lieutenant Colonel Hernán Orozco Castro, and that regular criminal courts would hear the criminal investigation against Colonel Lino Hernando Sánchez Prado, Sergeant Juan Carlos Gamarra Polo and Sergeant José Miller Ureña Díaz (supra para. 96.92).

200. Therefore, the criminal proceeding was divided between the two venues and on February 12, 2001 Brigadier General Jaime Humberto Uscátegui Ramírez was convicted by the High Military Court to 40 months in prison, to a fine amounting to the equivalent of 60 monthly minimum wages for the crime of malfeasance of public office by omission, to suspension of patria potestas for the same time as the main sentence applied to him, and to absolute dismissal from the Military Forces; also, said military officer was acquitted of the crime of falsifying a document while exercising his functions, and discontinuance of the proceeding was ordered in his favor with regard to the crimes of homicide and aggravated kidnappings, terrorism and conspiracy to commit a crime (supra para. 96.98). Likewise, Lieutenant Colonel Hernán Orozco Castro was convicted to 38 months in prison and to a fine of 55 current legal minimum monthly wages, for the crime of malfeasance of public office by omission; he too was acquitted of the crime of falsifying a document while exercising his functions, and discontinuance of the proceeding was ordered in his favor with regard to the crimes of multiple homicide, aggravated kidnappings, terrorism, conspiracy to commit a crime, and violation of Decree 1194 of 1989 (supra para. 96.99). After being convicted and spending 24 months in prison, General Uscátegui was released by a decision of the High Military Court (supra para. 96.102).

201. Allocation of part of the investigation to military criminal jurisdiction has been viewed by the Commission and the representatives as an abridgment of the rights to judicial protection and to due process (supra para. 190 b) and 191 a)).

202. With regard to military criminal jurisdiction, the Court has already established that in a democratic State under the rule of law said jurisdiction must have a restrictive and exceptional scope and must be geared to protection of special legal interests, linked to the functions assigned to the military forces by the Law. For this reason, the military must only be tried there for crimes or offenses that by their very nature affect legal interests that pertain directly to the military order. [FN248]

[FN248] See Case of the 19 Tradesmen, supra note 190, para. 165; Case of Las Palmeras. Judgment of December 6, 2001. Series C No. 90, para. 152, and Case of Cantoral Benavides. Judgment of August 18, 2000. Series C No. 69, para. 112.

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203. In the instant case, the Court notes that on November 13, 2001, after several appeals, the Constitutional Court of Colombia ordered the annulment of the actions carried out under military criminal jurisdiction, when it ruled on an action for the protection of basic rights filed on September 30, 1999 by Nory Giraldo de Jaramillo, a civil party to the criminal proceeding, against the aforementioned decision of August 18, 1999 by the Disciplinary Chamber of the High Council of the Judiciary. The Constitutional Court decided to protect the basic right to due process due to disregard for the Competent judge, and therefore annulled the judgments issued

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by the Criminal Chamber of the High Court of the Judicial District of Bogotá on October 15, 1999 and by the Criminal Appellate Chamber of the Supreme Court of Justice on December 9, 1999; it annulled said provision of August 18, 1999 and ordered the case remitted to the High Council of the Judiciary for it to decide on the clash of spheres of competence. In addition to the considerations of the Constitutional Court quoted above (supra para. 117), the Court must highlight that when it ruled on the clash of spheres of competence based on that decision, the Council of the Judiciary deemed that:

[…] the file contains evidence pointing to the fact that the officers involved were forewarned, both because their high military rank meant that they were aware of the actions of the self-defense or paramilitary groups, and because they themselves sent a message on July 15, 1997, when the macabre event was just beginning […]
For a better understanding of the case, it is appropriate to take up some of the considerations of the Constitutional Court in its 2001 judgment SU-1184, where it noted that the military forces and the National Police have the role of guarantors stemming from their obligation to carry out non-renounceable duties in a democratic State, as reflected in […] Article 217 of the Constitution as well as in Article 209 ibidem, which establish their obligation to actively and effectively participate in defense of the Constitutional rights of the members of society; existence of this role as guarantors means that the charge is made for a crime against humanity, or in general for grave human rights violations, whatever the form of intervention, the degree of involvement in the execution or the attribution of subjective liability, that the chargeable omission falls under the jurisdiction of regular courts, because when one has the role of guarantor, omissions that enable, facilitate or cause (whether as perpetrator or accomplice, whether the crime was attempted or committed, culpably or with malice) a violation of human rights or of international humanitarian law, these behaviors are not related to the service […] and more specifically that the omissions committed by the accused enabled acts that degrade the sense of humanity, and therefore, due to objective reasons, jurisdiction cannot be allocated to military criminal justice.
Omissions by the security forces are likewise considered unrelated to the service in those same cases in which the active conduct is not connected to the Constitutional mission assigned, that is, those that take place in the context of an operation that ab initio had criminal purpose, those that are conducted in a legitimate operation but in the course of which there is an essential deviation of the course of the activity or when they do not impede grave violations of human rights or of international humanitarian law.
In brief, since the charge against officers JAIME HUMBERTO USCATEGUI RAMIREZ AND HERNAN OROZCO CASTRO involves committing crimes against human rights by omission, in events that took place when they respectively held the rank of Brigadier General and Major of the Army, and as such had the role of guarantors of the lives, honor and property of the citizens of Mapiripán, the matter must be heard by regular venue, represented here by the Public Prosecutor's Office of the Human Rights Unit whose competence was challenged, insofar as they definitely did not fulfill the constitutional functions assigned to the security forces, and these circumstances completely deny them the guarantee of military criminal jurisdiction, for which reason they may not be tried under military criminal justice; the file will therefore be forwarded to said Unit of the Public Prosecutor's Office for appropriate action. [FN249]

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[FN249] See February 21, 2002 ruling, issued by the High Council of the Judiciary (file with appendixes to the application, appendix 55, pages 853, 855 and 856).
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204. Therefore, on February 21, 2002 the High Council of the Judiciary settled the clash of jurisdictions that had been raised, ruling that the proceedings should take place under regular criminal jurisdiction, represented by the Human Rights Unit of the Office of the Attorney General (supra para. 96.109). On June 28, 2002 the Human Rights Unit annulled the decisions of the military criminal courts and the case returned to regular courts, leaving the evidence tendered and the actions taken by said Unit untouched (supra para. 96.110).

205. The Court notes that the first attempts for the facts that took place in Mapiripán to be heard by military criminal courts go back to April 1999. At that time, the Full Court of the Constitutional Court of Colombia had ruled on the scope of competence of military criminal jurisdiction and it had stated, inter alia, that

[…] for a crime to fall under the competence of military criminal jurisdiction […] the punishable fact must arise from exceeding powers conferred or abuse of authority in the framework of an activity directly linked to a function that pertains directly to the armed corps. [I]f the agent has criminal intent from the start, and then uses his position to carry out the punishable act, the case falls under regular jurisdiction, even in those cases where there might be an abstract relationship between the aims of the security forces and the perpetrator's punishable act. […T]he tie between the criminal act and the service-related activity is broken when the crime is unusually grave, as in the case of crimes against humanity. Under these circumstances, the case must be allocated to regular courts, given the total contradiction between the crime and the constitutional mandates of the security forces. [FN250]

[FN250] See judgment C-358 of August 5, 1997, issued by the Constitutional Court.
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206. The Court therefore notes that the Council of the Judiciary could have applied this jurisprudence of the Constitutional Court from the outset, since it already existed as precedent, and was reiterated in the aforementioned November 13, 2001 judgment of said court.

b) Administrative-law proceedings

207. The case file before the Court shows that the next of kin of four of the victims of the Mapiripán Massacre have initiated administrative-law proceedings for direct reparation of the property-related and moral damages due to the facts, before the Administrative Court of Meta and against the Ministry of Defense, National Army.

208. In this regard, the Court views in a positive light that on February 1, 2005, the State and the next of kin of Sinaí Blanco Santamaría, Álvaro Tovar Muñoz and José Rolan Valencia reached a full friendly settlement through administrative-law proceedings (supra para. 96.130).

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The State pointed out that said judgments had led to res judicata. Likewise, regarding the status of said proceedings when this Judgment is issued, the Court notes that:

a) in the proceeding initiated by Nory Giraldo de Jaramillo, spouse of Sinaí Blanco Santamaría, she stated that she did not wish to settle in face of the settlement proposal by the State (supra para. 96.132);
b) the decision by the Administrative Court of Meta that approves the aforementioned settlements also accepts the waiver of claims in an application filed by the next of kin of Néstor Orlando Flórez Escucha (supra para. 96.131); and
c) according to what the State expressed, said agreements and the last waiver, once approved, have led to res judicata (supra para. 96.131).

209. On the other hand, when they provided information as evidence to facilitate adjudication, the representatives mentioned that there are at least 10 applications, "filed by the next of kin of victims in connection with the facts in Mapiripán, which are being processed under administrative law," and they also referred to information on displaced persons "who are not represented by the Colectivo de Abogados ["José Alvear Restrepo"] in administrative-law proceedings in Colombia, and who [they] know have received humanitarian aid due to the facts in Mapiripán". The Court is not aware of the reasons why the representatives did not report the existence of those other administrative-law proceedings until the end of this proceeding, even though apparently most of them began in 1999. The representatives also did not report on the reasons why they did not represent these persons who are allegedly next of kin of victims of the massacre. For lack of further information, the Court will not refer in this Judgment to those administrative-law proceedings filed by those other individuals mentioned as alleged next of kin of victims of the Mapiripán Massacre, without detriment to their asserting their rights before the national authorities.

210. When it assesses the effectiveness of domestic remedies sought under national administrative-law jurisdiction, the court must establish whether the decisions taken by the latter have in fact contributed to ending impunity, to insuring non-recidivism of injurious acts, and to guaranteeing free and full exercise of the rights protected by the Convention.

211. The Court recalls that the aim of International Human Rights Law is to give the individual means for the protection of internationally recognized human rights vis-à-vis the State (its bodies, its agents, and all those who act in its name). Under international jurisdiction the parties and the subject matter of the dispute are, by definition, different from those under domestic venue. [FN251] When it establishes the international responsibility of the State for abridging the rights embodied in Articles 8(1) and 25 of the American Convention, the substantive aspect of the dispute is not whether judgments were issued in the domestic venue or whether settlement agreements were reached regarding the administrative or civil liability of a body of the State, with regard to violations against the next of kin of some victims of the facts in Mapiripán, but rather whether the domestic proceedings enabled protection of true access to justice in accordance with the standards set forth in the American Convention.

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[FN251] See Case of the Serrano Cruz Sisters, supra note 11, para. 56; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 73, and Case of the 19 Tradesmen, supra note 190, para. 181.

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212. In this regard, the European Court of Human Rights addressed the scope of civil responsibility with regard to the requirements of international protection in the case of Yasa versus Turkey, and it deemed that

"an administrative-law action […] is a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification is not, by definition, a prerequisite to bringing an action of this nature. However, the investigations which the Contracting States are obliged […] to conduct in cases of fatal assault must be able to lead to the identification and punishment of those responsible […]. That obligation cannot be satisfied merely by awarding damages […]. Otherwise, […] the State's obligation to seek those guilty of fatal assault might thereby disappear. [FN252]

[FN252] See European Court of Human Rights. Yasa v. Turkey [GC], judgment of 2 September 1998, Reports of Judgments and Decisions 1998-VI, § 74.

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213. Likewise, in the case of Kaya versus Turkey the European Court of Human Rights decided that the violation of a right protected by the convention could not be redressed exclusively by establishment of civil liability and the respective payment of compensation to the next of kin of the victim. [FN253]

[FN253] See European Court of Human Rights. Kaya v. Turkey [GC], judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, § 105.

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214. The Court deems that comprehensive reparation of the abridgment of a right protected by the Convention cannot be restricted to payment of compensation to the next of kin of the victim. In the instant case, however, the Court appreciates some of the results attained in said administrative-law proceedings, which include certain aspects of the reparations for pecuniary and non-pecuniary damages, which it will take into account when it establishes the respective reparations, insofar as the outcome of those proceedings has generated res judicata and is reasonable under the circumstances of the case.

c) Disciplinary proceedings

215. A disciplinary proceeding based on the facts of July 1997 commenced before the Attorney General's Office against several members of the Armed Forces and public officials. The file before the Court only shows that on April 24, 2001 the Deputy Attorney General of the Nation decided to disciplinarily punish, with absolute dismissal from the Armed Forces or a

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severe reprimand, several members of the Army, and to dismiss several public officials (supra para. 96.134). Despite being a body to which the next of kin of the victims have no access, the Court appreciates the decision of said Attorney General's Office in terms of the symbolic value of the message of reproval that this type of punishment has within the Armed Forces. Nevertheless, since the parties contributed no further information on this matter, the Court will not rule on the actions during said proceedings.

d) Effectiveness of the duty to investigate within the regular criminal proceeding

216. This Court has pointed out that the right to access to justice goes beyond the processing of domestic proceedings, as it must also ensure, within a reasonable time, the right of the alleged victims or their next of kin for everything necessary to be done to learn the truth about what happened and to punish those who may be responsible. [FN254]

[FN254] See Case of the Serrano Cruz Sisters, supra note 11, para. 66; Case of the 19 Tradesmen, supra note 190, para. 188, and Case of Myrna Mack Chang, supra note 5, para. 209.

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217. The Court has established, regarding the principle of reasonable term set forth in Article 8(1) of the American Convention, that it is necessary to take into account three aspects to decide whether the time taken by a proceeding is reasonable: a) complexity of the matter, b) procedural activity of the interested party, and c) conduct of the judicial authorities. [FN255]

[FN255] See Case of the Moiwana Community, supra note 4, para. 160; Case of the Serrano Cruz Sisters, supra note 5, para. 67, and Case of Tibi, supra note 16, para. 175. Likewise see European Court of Human Rights. Wimmer v. Germany, no. 60534/00, § 23, 24 May 2005; Panchenko v. Russia, no. 45100/98, § 129, 8 February 2005, and Todorov v. Bulgaria, no. 39832/98, § 45, 18 January 2005.

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218. Nevertheless, the Court deems that pertinence of those three criteria to decide whether the term of a proceeding is reasonable depends on the circumstances of each case.

219. In point of fact, it is necessary to recall that the instant case is one in which there were extralegal executions, and in this type of cases the State has the duty to ex officio and promptly begin a serious, impartial and effective investigation. [FN256] During the investigative and judicial processes, the victims of human rights violations, or their next of kin, must have ample opportunity to participate and be heard, both regarding elucidation of the facts and punishment of those responsible, and in seeking fair compensation. [FN257] However, the State is responsible for effectively seeking to establish the truth, and this depends neither on the procedural initiative of the victims or of their next of kin, nor on their contributing evidence. [FN258] In this case, some of the accused have been tried and convicted in absentia. Furthermore, limited participation of the next of kin in the criminal proceedings, whether as civil parties or as witnesses, is a consequence of the threats suffered during and after the massacre, of their situation of

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displacement and of fear of participating in said proceedings. Therefore, it can hardly be argued that in a case such as this one the procedural activity of the interested party should be considered a decisive criterion to decide whether the term has been reasonable.

[FN256] See Case of the Moiwana Community, supra note 4, para. 145; Case of the Gómez Paquiyauri Brothers, supra note 185, para. 131, and Case of Myrna Mack Chang, supra note 5, para. 157.
[FN257] See Case of the Moiwana Community, supra note 4, para. 147; Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 63, and Case of the 19 Tradesmen supra note 193, para. 186.
[FN258] See Case of the Moiwana Community, supra note 4, para. 146; Case of the Serrano Cruz Sisters. supra note , para. 61, and Case of the 19 Tradesmen, supra note 193, para. 112.

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220. Regarding the complexity of the case, the Court recognizes that the matter investigated by the domestic judicial bodies is a complex one. Despite that complexity, to date there are concrete outcomes of the investigation and the criminal proceeding that, while they are insufficient, have led to the conviction of several members of the Army, as well as of several members of paramilitary groups, for their participation in the facts (supra para. 96.126 e infra para. 230).

221. The massacre did in fact take place in the context of the domestic armed conflict in Colombia; there were a large number of victims –who were executed or displaced- and it took place in a remote region where access is difficult, among other factors. However, in this case the complexity of the matter is also linked to the difficulties caused during the investigation, which originated in actions and omissions by the administrative and judicial authorities of the State itself, as will be analyzed in the following section. It is therefore not possible to sustain an argument to justify the duration of the investigations, as the State seeks to do, based on "vicissitudes and limitations in terms of financial and technical resources, […] as well as the critical public order situation in the areas where the investigations must be conducted and the evidence gathered."

222. While it has been more than eight years since the facts took place, the criminal proceeding continues to be open and, despite the aforementioned delays, there have been certain results that must be taken into account. Therefore, the Court deems that, rather than basing its analysis on whether the term of the investigations has been reasonable, the responsibility of the State in light of Articles 8(1) and 25 of the Convention must be established by means of an assessment of the development and results of the criminal proceeding, that is, on the effectiveness of the duty to investigate the facts to establish the truth of what happened, to punish those responsible, and to provide reparation for the violations against the victims.

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223. As was pointed out, in cases of extra-legal executions, the jurisprudence of this Court is unequivocal: the State has the duty to begin ex officio, forthwith, a serious, impartial and

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effective investigation (supra para. 219) that must not be undertaken as a mere formality destined beforehand to be fruitless. [FN259]

[FN259] See Case of the Moiwana Community, supra note 4, para. 146; Case of the Serrano Cruz Sisters, supra note, para. 61, and Case of Bulacio, supra note 196, para. 112.

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224. In this regard, based on the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, this Court has specified the guiding principles that must be followed when a death may be due to an extra-legal execution. The State authorities in charge of an investigation must seek, at the least, inter alia: a) to identify the victim; b) to obtain and preserve evidence regarding the death, so as to aid any potential criminal investigation regarding those responsible; c) identify possible witnesses and receive their statements regarding the death under investigation; d) establish the cause, manner, place and time of death, as well as any pattern or practice that may have caused the death; and e) differentiate between natural death, accidental death, suicide, and homicide. It is also necessary to exhaustively investigate the crime scene, autopsies and analyses of human remains must be conducted rigorously, by competent professionals, applying the most appropriate procedures [FN260]

[FN260] See Case of the Moiwana Community, supra note 4, para. 149, and Case of Juan Humberto Sánchez, supra note 187, para. 127 and 132. Likewise, United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991).

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225. In the instant case, the investigation began almost immediately after the days of the massacre. It has been proven that the paramilitary remained in Mapiripán from July 15 to July 20, 1997, and the preliminary investigation of the facts was begun two days later by the 12th Deputy Public Prosecutor's Office before the Regional Judges, based in San José del Guaviare; the investigation was subsequently taken up by the National Human Rights Unit of the Office of the Attorney General (supra para. 96.68).

226. The modus operandi of execution of the massacre –destruction of the bodies and terrorizing the surviving inhabitants of Mapiripán – has made it difficult to fully identify the victims of the massacre. However, facts proven and also acknowledged by the State show a number of problems that took place in the course of the investigations, demonstrating grave lack of due diligence in carrying out the official actions. [FN261]

[FN261] See Case of the Moiwana Community, supra note 4, para. 148; Case of the Serrano Cruz Sisters. supra note 11, para. 65, and Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 129.

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227. At first, the Army did not effectively cooperate with the judicial authorities who sought to reach the site of the facts, for which reason the members of the Public Prosecutor's Office, of the Security Forces and a Delegate of the Presidency of the Republic were unable to enter Mapiripán until July 23, 1997 (supra paras. 96.46 and 96.69). Then, misconduct of the investigations is especially clear at the outset, in the obvious lack of control of the crime scene and in the insufficient actions of the first authorities to arrive in Mapiripán. During those initial investigative acts, only the autopsies of the remains of José Rolan Valencia and of a person listed as "N.N." were conducted, and there was only one certification of removal of a body, which also coincides with one of the autopsies. One year after the facts, the file before the Court does not show that any other investigative acts had taken place, other than the trip by a "judicial committee" to Mapiripán, receiving testimony from civilian authorities of the municipality, and 58 statements of persons displaced by the facts in Mapiripán, the testimony of two self-confessed paramilitary, several judicial inspections, one provincial judicial inspection, also by the Procuraduría Delegada para los Derechos Humanos (Office of the Deputy Ombudsperson for Human Rights), and two reports submitted by the Army in response to a request by that Office, according to the report by the Attorney General's Office (supra paras. 96.71 to 96.76).

228. Negligence of the judicial authorities in charge of examining the circumstances of the massacre by timely gathering of evidence in situ, cannot be corrected by the laudable but late evidence-gathering process to recover the mortal remains from the bottom of the Guaviare River, which the Attorney General's Office only began in December 2004, that is, more than eight years after the facts. The shortcomings mentioned above, together with attempts by some members of the Army to cover up the facts (supra paras. 96.37, and 96.44 to 96.46), can be considered grave non-fulfillment of the duty to investigate the facts, definitely affecting subsequent development of the criminal process.

229. The investigation continued; some arrest warrants were issued, only a few of which were effectively enforced, and in April and May 1999 the National Human Rights Unit of the Office of the Attorney General filed charges under regular venue against seven alleged paramilitary and against four members of the Army. Subsequently, the proceeding was divided between the regular criminal and military criminal jurisdictions, for which reason for almost three years both proceedings were parallel until an order was issued once again for them to be processed jointly (supra paras. 96.90 to 96.109).

230. At the time of the instant Judgment, the criminal proceeding is ongoing and its current status, according to the information in the file before the Court, is as follows (supra para. 96.126):

a) all in all, approximately 17 persons have been prosecuted;
b) charges were filed against thirteen accused persons, five of whom were members of the Army;
c) the Attorney General's Office has issued nine preventive arrest warrants. Of these, the arrest warrants against Arnoldo Vergara Trespalacios, Francisco Gómez Vergaño, and Miguel Enrique Vergara Salgado, allegedly paramilitary, have not been effectively enforced;

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d) there are two first-instance convictions against seven individuals: the paramilitary Carlos Castaño, Julio Flórez, Luis Hernando Méndez Bedoya and José Vicente Gutiérrez Giraldo; Sergeants José Miller Ureña Díaz and Juan Carlos Gamarra Polo, and Lieutenant Colonel Lino Hernando Sánchez Prado. There is an appellate decision that acquitted José Vicente Gutiérrez Giraldo and upheld the previous sentence against Carlos Castaño, Julio Flórez, Sergeants José Miller Ureña Díaz and Juan Carlos Gamarra Polo, and Lieutenant Colonel Lino Hernando Sánchez Prado;
e) of these seven persons convicted to prison sentences, at least two arrest warrants are pending enforcement, those issued against paramilitary Carlos Castaño Gil and Luis Hernando Méndez Bedolla. However, according to information supplied by the State, the arrest warrant issued against Carlos Castaño Gil has been suspended; and
f) on August 3, 2005 the Attorney General's Office ordered Salvatore Mancuso Gómez to be formally joined to the investigation. However, on August 4, 2005 said Unit stated that "due to his status as a representative member of the 'Autodefensas Unidas of Colombia' in the ongoing peace process and that of demobilization and reinsertion into civil life of the men under his command, said order was suspended in accordance with subparagraph two of paragraph two of Article 3 of Law 782 of 2002. However, to ensure the appearance of Mancuso Gómez in the investigation, [the High Commissioner for Peace was asked to report] the place of residence or location, for him to be [...] heard during the investigative phase." Furthermore, on August 3, 2005 an arrest warrant was issued against José Pastor Gaitán Ávila, as the alleged co-perpetrator of the crimes of homicide in combination with the punishable crimes of kidnapping, terrorism and conspiracy to commit a crime.

231. In the instant case, the aforementioned non-fulfillment of the duty to investigate is closely tied to non-fulfillment by the State of the duty to protect the victims, pointed out in the chapter on the International Responsibility of the State (supra paras. 101 to 123).

232. One of the conditions that the State must create to effectively ensure full enjoyment and exercise of the right to life, [FN262] as well as other rights, is necessarily reflected in the duty to investigate abridgments of said right. In its jurisprudence the Court has developed the positive obligation of the States in this regard

[c]ompliance with Article 4 of the American Convention, related to Article 1(1) of that same Convention, not only requires that no person be arbitrarily deprived of their life (negative obligation), but also requires that the States take such steps as may be necessary to protect and preserve the right to life (positive obligation), under its duty to ensure free and full exercise of the rights of all persons under its jurisdiction. This active protection of the right to life por by the State involves not only its legislators, but all State institutions, and those who should safeguard security, be they police forces or armed forces. In view of the above, States must take such steps as may be necessary, not only to prevent, try and punish those responsible of deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents. [FN263]

[FN262] See Case of the "Juvenile Reeducation Institute", supra note 4, para. 156.

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[FN263] See Case of Huilce Tecse. Judgment of March 3, 2005. Series C No. 121, para. 66; Case of the "Juvenile Reeducation Institute", supra note 4, para. 158; Case of the Gómez Paquiyauri Brothers, supra note 185, para. 129; Case of the 19 Tradesmen, supra note 193, para. 153.

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233. This duty to investigate derives from the general obligation of the States Party to the Convention to respect and ensure the human rights embodied in it, that is, the obligation set forth in Article 1(1) of said treaty together with the substantive right that should have been protected or ensured. Thus, in cases of violations of the right to life, fulfillment of the obligation to investigate is a key component of establishment of the responsibility of the State for disregard of the right to fair trial and the right to judicial protection.

234. In this regard, in the Ergi v. Turkey case, the European Court of Human Rights found that the State had breached Article 2 of the European Convention, because it deemed that, while there was no conclusive evidence that the security forces had caused the victim's death, the State did not fulfill its obligation to protect the victim's right to life, taking into account the conduct of the security forces and the lack of an adequate and effective investigation. [FN264]

[FN264] See European Court of Human Rights, Ergi v. Turkey [GC], judgment of 28 July 1998, Reports of Judgments and Decisions 1998-IV, § 85-56.

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235. In the instant case, non-fulfillment of the duties to protect and investigate, already established, has contributed to impunity of most of those responsible for the violations. Said non-fulfillment shows a form of continuity of themodus operandi of the paramilitary in covering up the facts [FN265] and it has led to subsequent ineffectiveness of the ongoing criminal proceeding for the facts in the massacre, in which at least 100 paramilitary participated directly, with collaboration, acquiescence, and tolerance by members of the Colombian Armed Forces.

[FN265] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in 1997, E/CN.4/1998, March 9, 1998:
117. Both the Colombian authorities and non-governmental organizations agree that non-investigation and non-prosecution for criminal human rights violations and war crimes is one of the factors that has contributed most to the persisting abundance and reiteration of conducts that abridge rights protected by international instruments. The Ombudsperson asserted that the difficult outlook of human rights in his country, "includes impunity as one of its basic ingredients, a powerful feedback mechanism for violence, and leads some to take justice in their own hands, and this constitutes an almost unbreakable vicious circle."

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236. The Court notes that such an operation could not be overlooked by the high military commanders in the area from which the paramilitary left and through which they moved. Some of the facts with regard to planning and execution of the massacre are included in the State's

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acknowledgment of responsibility, and even though some of those responsible for the massacre have been convicted, there is still widespread impunity in the instant case, insofar as the truth of all the facts has not been established and not all the masterminds and direct perpetrators of those facts have been identified. Furthermore, it is a significant fact that some of the convicted paramilitary are not serving their sentence because the arrest warrants against them have not been enforced.

237. The Court has repeatedly pointed out that the State has the duty to avoid and combat impunity, which the Court has defined as "the overall lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention." [FN266] In this regard, the Court has asserted that:

[...] the State is obliged to combat this situation by all available legal means. Impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin. [FN267]

[FN266] See Case of the Moiwana Community, supra note 4, para. 203. Likewise, Case of the Serrano Cruz Sisters, supra note 11, para. 170, and Case of the Gómez Paquiyauri Brothers, supra note 185, para. 148.
[FN267] See Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 126. Likewise, Case of the Moiwana Community, supra note 4, para. 203; Case of the Serrano Cruz Sisters, supra note 11, para. 170, and Case of the Gómez Paquiyauri Brothers, supra note 185, para. 148.

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238. In this regard, the Court recognizes the difficult circumstances of Colombia, where its population and its institutions strive to attain peace. However, the country's conditions, no matter how difficult, do not release a State Party to the American Convention of its obligations set forth in this treaty, which specifically continue in cases such as the instant one. [FN268] The Court has argued that when the State conducts or tolerates actions leading to extra-legal executions, not investigating them adequately and not punishing those responsible, as appropriate, it breaches the duties to respect rights set forth in the Convention and to ensure their free and full exercise, both by the alleged victim and by his or her next of kin, it does not allow society to learn what happened, [FN269] and it reproduces the conditions of impunity for this type of facts to happen once again. [FN270]

[FN268] See Case of the Moiwana Community, supra note 4, para. 153; Case of the Serrano Cruz Sisters. Preliminary Objections, supra note , para. 118, and Case of Bámaca Velásquez, supra note 201, para. 207.
[FN269] See Case of the Moiwana Community, supra note 4, para. 153; Case of Juan Humberto Sánchez, supra note 78, para. 134, and Case of Trujillo Oroza. Reparations. Judgment of February 27, 2002. Series C No. 92, paras. 99 to 101 and 109.
[FN270] See Case of the Gómez Paquiyauri Brothers, supra note 185, para. 130, and Case of Myrna Mack Chang, supra note 5, para. 156.

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239. In this regard, as mentioned in the chapter on International Responsibility of the State in this Judgment (supra paras. 101 to 123), the Court bears in mind that a large number of cases of ties between the military and members of the security forces have been documented in Colombia, in connection with facts such as those of the instant case. [FN271] In the reports published since 1997 on the human rights situation in Colombia, the Office of the United Nations High Commissioner for Human Rights has documented the cases of collaboration between the security forces and the paramilitary, which have constituted a major obstacle to respect for human rights in Colombia, in the opinion of the High Commissioner. In her reports, the High Commissioner constantly refers to the State's impunity vis-à-vis violations by the paramilitary and connivance between these groups and the security forces. [FN272]

[FN271] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2005/10, February 28, 2005, paras. 61 and 62; statement by expert witness Federico Andreu Guzmán rendered before the Inter-American Court during the public hearing held on March 7, 2005, and sworn statement rendered by expert witness Robin Kirk on February 15, 2005 (file with statements rendered before a notary public, appendix 15, page 4631).

[FN272] See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in 1999, E/CN.4/2000/11, March 9, 2000, paras. 110 and 111; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in the year 2000, E/CN.4/2001/15, March 20, 2001, para. 131-136, 254 ["There is still much concern about persisting ties between public employees and members of the paramilitary organizations, and lack of punishment."]; Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in 2001, E/CN.4/2002/17, February 28, 2002, para. 202, 211 and 365 ["Ultimately, the impunity that cloaks those responsible for paramilitary actions, through action or omission, and the limited effectiveness of State mechanisms to combat them explain to a large extent the strengthening of those groups."], and Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia in the year 2002, E/CN.4/2003/13, February 24, 2003, para. 34, 74, 75-77 ["The fact that the vast majority of cases remain in a situation of impunity, without establishing the criminal liability of public employees for their links with paramilitary groups and actions, is one of the most questionable aspects of the commitment to combat said links."]

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240. In brief, partial impunity and ineffectiveness of the criminal proceeding in this case reveal two aspects: first, the vast majority of those responsible have not been formally joined to the investigations, or they have not been identified or prosecuted –if we take into account that the State acknowledged that more than 100 individuals participated in the massacre and that the Court has established its responsibility because the massacre could not have been committed without knowledge, toleration and collaboration by the highest commanders of the Colombian Army in the areas where the facts took place. Secondly, impunity is reflected in the trial and conviction in absentia of the paramilitary who, while they hold high positions in the structures of the AUC, as in the case of Carlos Castaño Gil, their leader, they have benefited from the way the

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judicial system has acted, convicting them but without executing the punishment. In this regard, the Court notes the fact communicated by the State, when it sent information requested as evidence to facilitate adjudication, that on August 3d of this year an order was issued to formally join Salvatore Mancuso Gómez to the proceeding, but the arrest warrant against him was suspended "due to his role as representative of the Autodefensas Unidas of Colombia in the peace process undertaken by the Government with said organization."

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241. In conclusion, the Court deems that the violations found regarding the victims' rights to personal liberty, to humane treatment and to life (supra para. 139), are aggravated as a consequence of non-fulfillment of the duty to provide protection and of the duty to investigate the facts, as a consequence of the lack of effective judicial mechanisms to this end and to punish all those responsible for the Mapiripán Massacre. Therefore, the State has violated Articles 8(1) and 25 of the Convention, in combination with Article 1(1) of that same treaty, to the detriment of the next of kin of the victims of the instant case.

XIV. REPARATIONS (Application of Article 63(1) of the American Convention) (OBLIGATION TO MAKE REPARATIONS)

242. In accordance with the considerations on the merits set forth in the previous chapters, based on the facts in the case, the Court found abridgments of Articles 4(1), 5(1) and 5(2), 7(1) and 7(2), 8(1), 25, 19 and 22(1) of the American Convention, all of them in combination with Article 1(1) of said treaty. The Court has repeatedly pointed out that any violation of an international obligation that has caused damage entails the duty to make adequate reparations. [FN273] To this end, Article 63(1) of the American Convention establishes that:

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN273] See Case of Acosta Calderón, supra note 7, para. 145; Case of Yatama, supra note 7, para. 230, and Case of the Indigenous Community Yakye Axa, supra note 12, para. 179.

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243. Said Article reflects a customary rule that is one of the basic principles of contemporary International Law regarding the responsibility of States. Thus, when an unlawful act is attributable to a State, it immediately incurs international responsibility for breaching the international rule involved, and this entails the duty to redress and to make the consequences of the abridgment cease. [FN274]

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[FN274] See Case of Acosta Calderón, supra note 7, para. 146; Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 121, and Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 87.

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244. Reparation of the damage caused by abridgment of an international obligation requires, whenever possible, full reparation (restitutio in integrum), consisting of reestablishment of the situation prior to the violation. If this is not possible, as in the instant case, the international court must order a series of measures that, in addition to ensuring respect for the rights abridged, will redress the consequences caused by the infringements and order, inter alia, payment of compensation for the damage caused. [FN275] The obligation to make reparations, which is regulated in all aspects (scope, nature, manner, and establishment of the beneficiaries) by International Law, cannot be modified by the State nor can it fail to comply with it by invoking domestic legal provisions. [FN276]

[FN275] See Case of Acosta Calderón, supra note 7, para 147; Case of Caesar, supra note 274, para. 122, and Case of Huilca Tecse, supra note 274, para. 88.

[FN276] See Case of Acosta Calderón, supra note 7, para 147; Case of the Indigenous Community Yakye Axa, supra note 12, para. 181, and Case of Caesar, supra note 274, para. 122.

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245. Reparations consist of measures that seek to make the effects of the violations disappear. Their nature and amount depend on the pecuniary and non-pecuniary damage caused. Reparations should entail neither enrichment nor impoverishment for the victim or the victim's heirs. [FN277]

[FN277] See Case of Acosta Calderón, supra note 7, para. 148; Case of the Indigenous Community Yakye Axa, supra note 12, para. 182, and Case of Caesar, supra note 274, para. 123.

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246. The Court must reiterate its consternation regarding the grave facts of the instant case, which have a series of effects when reparations are set. It was established that the objective of the modus operandi of the massacre was to make the identification of executed or missing victims difficult or impossible, by destroying evidence, intimidating and displacing the inhabitants of the municipality of Mapiripán. The State has recognized the existence of approximately 49 executed or missing victims, but only close to half of then have been individually identified. This resulted from non-fulfillment by the State of its duties to protect the victims and the next of kin during the massacre, from actions and omissions by its agents who collaborated with the paramilitary, as well as from lack of diligence by the State in the investigations, which has led to a situation in which, to date, most of the next of kin of the other persons executed or missing have not even attempted to file complaints before the authorities regarding their missing next of kin, and since then no other victims or next of kin have been identified.

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247. In light of the criteria set forth above, and of the circumstances of the instant case, the Court will now analyze the claims filed by the Commission and by the representatives regarding reparations, with the aim of ordering measures to redress the damage in the instant case. The Court states its deep concern regarding the situation of the unidentified victims, for whose death the State also acknowledged its responsibility, as well as regarding that of their next of kin. While the approximately 49 victims acknowledged by the State as well as their next of kin, will be beneficiaries of other forms of reparation and/or the compensation set for non-pecuniary damages, for lack of information the Court abstains from ordering compensation for pecuniary damages in favor of those victims and their next of kin who have not been individually identified in this proceeding. However, the Court states that setting of reparations in this international instance neither obstructs nor precludes the possibility of the next of kin of unidentified victims filing the appropriate complaints before the national authorities, as they come to be identified, including the means ordered in this Judgment (infra paras. 308 and 257.b)).

A) BENEFICIARIES

248. Pleadings of the Commission

a) given the nature of the case, the beneficiaries cannot be fully identified until the State completes a serious and exhaustive investigation that elucidates the scope of the damage caused by the massacre, including full identification of the victims. Victims identified in the future, as well as their next of kin, must be considered beneficiaries of the reparations, regarding pecuniary and non-pecuniary damages;

b) when the application was filed, the following beneficiaries' names were known:

i. next of kin of Sinaí Blanco Santamaría: Nory Giraldo de Jaramillo (common-law spouse); Carmen Johanna Jaramillo Giraldo (daughter); Blanca Lilia Ardila Castañeda (spouse); Yudi Sirley Blanco Ardila (daughter); Arbey Blanco Ardila (son) and María Isabel Blanco Ortiz (daughter);

ii. next of kin of Antonio María Barrera: Viviana Barrera Cruz (daughter);

iii. next of kin of Enrique, Jorge, Luis Eduardo and José Alberto Pinzón López: Teresa López de Pinzón (mother); Luz Mery Pinzón López (sister); Esther Pinzón López (sister); Sara Paola Pinzón López (sister) and María Teresa Pinzón López (sister);

iv. next of kin of Diego Armando Martínez Contreras, Hugo Fernando Martínez Contreras and Gustavo Caicedo Rodríguez: Mariela Contreras Cruz (mother and spouse); Maryuri Caicedo Contreras (sister); Gustavo Caicedo Contreras (brother) and Rusbel Asdrúbal Martínez Contreras (sister); and

v. next of kin of José Roland Valencia: Marina San Miguel Duarte (spouse), Vinda Valencia Sanmiguel (daughter), Johanna Valencia Sanmiguel (daughter), Roland Valencia Sanmiguel (son) and Ronald Valencia Sanmiguel (son).

249. Pleadings of the representatives

a) the beneficiaries of the compensations must be those directly harmed by the violations that took place, that is:

i. José Rolan Valencia (victim), Marina San Miguel Duarte (spouse), Nadia Marina Valencia Sanmiguel (daughter), Yinda Adriana Valencia Sanmiguel (daughter), Johanna Marina

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Valencia Sanmiguel (daughter), Roland Andrés Valencia Sanmiguel (son) and Ronald Mayiber Valencia Sanmiguel (son);

ii. Sinaí Blanco Santamaría (victim), Nory Giraldo de Jaramillo (spouse) and Carmen Johanna Jaramillo Giraldo (stepdaughter);

iii. Antonio María Barrera (victim) and Viviana Barrera Cruz (daughter);

iv. Diego Armando Martínez Contreras, Hugo Fernando Martínez Contreras and Gustavo Caicedo Rodríguez (victims), Mariela Contreras Cruz (mother and spouse), Yur Mary Herrera Contreras (sister and daughter), Zuli Herrera Contreras (sister and daughter), Maryuri Caicedo Contreras (sister and daughter), Gustavo Caicedo Contreras (brother and son) and Rusbel Asdrúbal Martínez Contreras (brother and son);

v. Enrique, Jorge, Luis Eduardo and José Alberto Pinzón López (victims), Teresa López Triana (mother), María Teresa Pinzón López (sister), Sara Paola Pinzón López, (sister), Esther Pinzón López, (sister) and Luz Mery Pinzón López (sister); and

vi. Jaime Riaño Colorado (victim) and Luz Mery Pinzón López (spouse).

250. Pleadings of the State

a) with regard to the beneficiaries, the State will abide by the evidence submitted to the Court;

b) it recognizes as proven victims of the facts those whom the domestic judicial and disciplinary authorities have identified as such in final rulings;

c) it asks the Court, while acknowledging the existence of possible damages in favor of unidentified victims, to order that for purposes of payment the "provide authentic evidence of their tie to the victim to receive payment of the respective compensation;" and

d) the criteria for reparation and compensation of the closest next of kin must be established. While the evidence offered by the Commission and the representatives provides indicia of said status, it is insufficient for a judgment that is free of uncertainty. It would be possible to resort to a motion for regulation of injuries based on Law 288 of 1996, in combination with the establishment of a revolving fund that is replenished as the disbursements ensured by it and managed as a trust fund are made, with the potential victims as beneficiaries, as the Court has done in previous cases, and if they do not appear with complete documentation within a reasonable term of two years, that the monies be used by public agencies in charge of aiding the victims of violence in Colombia, such as the Red de Solidaridad.

Considerations of the Court

251. The Court will now establish who must be considered the "injured party" under the terms of Article 63(1) of the American Convention, and therefore entitled to the reparations ordered by the Court, regarding both pecuniary and non-pecuniary damages, as appropriate.

252. We should recall that in adjudicatory proceedings before the Court, the interested party must state the beneficiary or beneficiaries. [FN278] Nevertheless, bearing in mind the specificities of this case and of the acknowledgment of international responsibility by the State, the Court must order reparations for those victims and next of kin whom it has not been possible to identify individually (supra para. 247).

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[FN278] See Case of the Moiwana Community, supra note 4, para. 177; Case of the Plan de Sánchez Massacre, supra note 5, para. 62, and Case of the "Juvenile Reeducation Institute", supra note 4, para. 273.

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253. First of all, the Court considers that the approximately 49 individuals executed or missing, regarding whose death the State has acknowledged its international responsibility, are "injured parties", as victims of violation of the rights embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the American Convention, in combination with Article 1(1) of that same Convention. Based on the body of evidence, the Court finds that among those victims the following have been identified: José Rolan Valencia, Sinaí Blanco Santamaría, Antonio María Barrera, Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras, Gustavo Caicedo Rodríguez, Enrique Pinzón López, Luis Eduardo Pinzón López, Jorge Pinzón López, José Alberto Pinzón López, Jaime Riaño Colorado and Álvaro Tovar Muñoz.

254. Also, information supplied by the State in its brief with final pleadings and in an April 6, 2005 document signed by the Attorney General's Office, points out that the following persons have been individually identified in the criminal proceeding: Jaime Pinzón, Raúl Morales, Edwin Morales, Manuel Arévalo, Omar Patiño Vaca, Eliécer Martínez Vaca and Uriel Garzón, as well as Ana Beiba Ramírez, as victims of the facts in Mapiripán (supra para. 96.52). In view of this, the Court appreciates the proven willingness of the State to cooperate by providing the names of those persons, which entails admitting that they are victims of the massacre, and based on this it will set the appropriate compensations.

255. On the other hand, the information supplied in the case provides the names of two possible victims of the Mapiripán Massacre: Néstor Orlando Flórez Escucha (supra paras. 96.131 and 96.128) and Wilson Molina Paredes. The appendixes to the application filed by the Commission include a complaint filed jointly on July 19, 1999 before the Administrative Law Court of Meta by the next of kin of Sinaí Blanco Santamaría and Néstor Orlando Flórez Escucha, in which they refer to the death of the former and the alleged disappearance of the latter during the facts in Mapiripán. Despite this, neither the Commission nor the representatives argued that Néstor Orlando Flórez Escucha was a victim of the massacre, and they did not include him or his next of kin in their claims regarding reparations. Thus, given the need for evidence to facilitate adjudication, the Court asked the State and the representatives to explain whether said person was an alleged victim of the massacre, as well as the reason why the next of kin had withdrawn said complaint. Despite said explicit request, when the representatives replied they sent a copy of said complaint, which was already part of the body of evidence, and they stated that "since the Colectivo de Abogados was not involved in said proceeding, they [had] no information available." The State, in turn, supplied as evidence to facilitate adjudication, the ruling by the Administrative Court of Meta that approved the aforementioned settlement agreements and that accepted the withdrawal of the claims of the application filed by the next of kin of Néstor Orlando Flórez Escucha (supra para. 96.131). Furthermore, in its September 2, 2005 brief regarding the Court's request for evidence to facilitate adjudication, the State reported that the next of kin of Wilson Molina Paredes had reached a friendly settlement in that venue, but they contributed no document attesting to said agreement. In other words, the Court does not have

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sufficient information to clearly establish that Néstor Flórez Escucha and Wilson Molina Paredes were victims executed or made to disappear during the Mapiripán Massacre. In view of the above, the Court will not consider them victims in the instant Judgment and therefore will order no compensation for them or their next of kin, without detriment to the possibility, if it is subsequently established that they are victims, of the next of kin appearing before the official mechanism established to claim their rights (infra para. 311).

256. This Court also finds that all the next of kin of the approximately 49 victims are "injured parties", as victims themselves of the abridgment of the rights embodied in Articles 5(1), 5(2), 8 and 25 of the American Convention, in combination with Article 1(1) of that same Convention (supra paras. 146 and 241); said next of kin have been victims of forced internal displacement (supra para. 189), as victims of abridgment of the right embodied in Article 22(1) of the American Convention, in combination with Articles 4(1), 5(1), 19 and 1(1) of that same Convention; all the boys and girls who are next of kin of the individuals who were executed or made to disappear and/or who have suffered displacement, as victims of abridgment of the right embodied in Article 19 of the American Convention, in combination with Articles 22(1), 4(1), 5(1) and 1(1) of that same Convention (supra para. 163). All of them will be entitled to the reparations set by the Court, with regard to non-pecuniary and/or pecuniary damages.

257. The next of kin of the victims will be entitled to the reparations set by the Court, as victims themselves of the violations found regarding the Convention, as well as of those set by the Court as injured parties due to the violations committed against the approximately 49 victims recognized by the State. In this regard:

a) in accordance with its jurisprudence, [FN279] this Court deems that the next of kin of the victims referred to in a document issued by a competent authority –a birth certificate, death certificate, or identification card-, or those recognized as such in domestic proceedings, have been identified; and
b) with regard to the other next of kin who have not been adequately identified or at least individually listed in this proceeding, the Court deems that the compensation due to each must be granted in the same manner set forth with regard to those who have been duly identified, in the understanding that they must appear before the official mechanisms that will be established for this purpose, in accordance with the instant Judgment (infra para. 311), within 24 months of when it was notified, and they must prove their relationship or kinship with the victim, through sufficient means of identification or by means of two attesting witnesses, as the case may be. [FN280]

[FN279] See Case of the Moiwana Community, supra note 4, para. 178, and Case of the Plan de Sánchez Massacre. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 63.
[FN280] See Case of the Moiwana Community, supra note 4, para. 178, and Case of the Plan de Sánchez Massacre. Reparations, supra note 279, para. 67.

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258. On the other hand, this Court must mention that the evidence supplied by the representatives and by the Commission, as well as the evidence requested by the Court to facilitate adjudication, refers to other next of kin who could be victims of displacement and of abridgment of the right to humane treatment and of the rights of the child. For example, the children of Luz Mery Pinzón López; Elvina or Elsy Delfina Vaca, mother of Omar Patiño Vaca and Eliécer Martínez Vaca; the four children of Zuli Herrera Contreras, as well as the five children of Viviana Barrera. The Court does not know why the representatives did not mention said persons as beneficiaries of the reparations and did not supply enough evidence for the Court to individually identify them, if that were the case. Therefore, these victims will be able to resort to the official mechanism established for them to receive the respective (infra para. 311).

259. Distribution of compensation amongst the next of kin of the victims who were executed or made to disappear, for pecuniary and non-pecuniary damages, will be as follows: [FN281]

a) fifty percent (50%) of the compensation will be divided in equal parts among the victims' children. The stepdaughters and stepson of Gustavo Caicedo Rodríguez, that is, Yur Mary Herrera Contreras, Zuli Herrera Contreras and Rusbel Asdrúbal Martínez Contreras, and the stepdaughter of Sinaí Blanco Santamaría, Carmen Johanna Jaramillo Girlado, who lived or had lived under the same roof as their stepfathers and had close, affectionate relations with them, will be treated as their daughters and son for purposes of their participation in the distribution of the compensation;
b) fifty percent (50%) of the compensation will be given to the spouse, spouse or common-law spouse of the victim when he or she died or disappeared. In the case of the spouse and common-law spouse of Sinaí Blanco Santamaría (supra para. 97.138 and 97.139), the respective compensation will be divided in equal parts;
c) if the victim had no children, spouse, spouse or common-law spouse, the compensation will be divided as follows: fifty percent (50%) will be given to the parents. If one of them is deceased, the respective part will accrue to the other. The remaining fifty percent (50%) will be divided in equal parts among said victim's siblings; and
d) if there are no next of kin in one or several of the categories defined in the subparagraphs above, the part that would have been allocated to the next of kin in that category or categories will proportionally accrue to their part of the remaining categories.

[FN281] See Case of the 19 Tradesmen, supra note 190, para. 230, and Case of the Caracazo. Judgment of November 11, 1999. Series C No. 58, para. 91.
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260. If the next of kin of the victims, entitled to the compensation ordered in the instant Judgment, are deceased, and they die before they received the respective compensation or if they are identified afterwards, the same criteria for distribution of the compensation stated in the previous paragraph will apply.

261. Based on what has been stated above, the names and particulars of the victims and their next of kin who have been individually identified in this proceeding are those listed in the following table:

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José Rolan Valencia (victim)
Marina Sanmiguel Duarte (spouse)
Nadia Marina Valencia Sanmiguel (daughter)
Yinda Adriana Valencia Sanmiguel (daughter)
Johanna Marina Valencia Sanmiguel (daughter)
Roland Andrés Valencia Sanmiguel (son)
Ronald Mayiber Valencia Sanmiguel (son)
Sinaí Blanco Santamaría (victim)
Blanca Lilia Ardila Castañeda (spouse)
Nory Giraldo de Jaramillo (spouse)
Yudi Sirley Blanco Ardila (daughter)
Arbey Blanco Ardila (son)
María Isabel Blanco (daughter)
Carmen Johanna Jaramillo Giraldo (stepdaughter)
Antonio María Barrera (victim)
Viviana Barrera Cruz (daughter)
Gustavo Caicedo Rodríguez (victim)
Diego Armando Martínez Contreras (victim)
Hugo Fernando Martínez Contreras (victim)
Mariela Contreras Cruz (spouse-mother)
Yur Mary Herrera Contreras (stepdaughter-sister)
Maryuri Caicedo Contreras (daughter-sister)
Gustavo Caicedo Contreras (son-brother)
Rusbel Asdrúbal Martínez Contreras (stepson-brother)
Zuli Herrera Contreras (stepdaughter- sister)
Enrique Pinzón López (victim)
Luis Eduardo Pinzón López (victim)
José Alberto Pinzón López (victim)
Jorge Pinzón López (victim)
Teresa López Triana de Pinzón (mother)
María Teresa Pinzón López (sister)
Sara Paola Pinzón López (sister)
Esther Pinzón López (sister)
Luz Mery Pinzón López (sister of Enrique, José Alberto, Luis Eduardo and Jorge Pinzón López and, also, spouse of Jaime Riaño Colorado)
Jaime Riaño Colorado (victim)
Álvaro Tovar Muñoz, aka “el Tomate” (victim)
Beatriz Rojas Vargas (spouse)
Julieth Lorena Tovar Rojas (daughter)
Ernesto Tovar Loaiza (father)
María Teresa Pérez Carrillo (adoptive mother)
Ernesto Tovar Muñoz (brother)
Fatty Tovar Muñoz (sister)
Ligia Tovar Muñoz de Ossa (sister)
Sandra Milena Tovar Pérez (sister)

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46 Adriana Tovar Pérez (sister)
47 Edelmira Tovar Muñoz (sister)
48 Jaime Pinzón (victim)
49 Edwin Morales (victim)
50 Omar Patiño Vaca (victim)
51 Eliécer Martínez Vaca (victim)
52 Uriel Garzón (victim)
53 Ana Beiba Ramírez (victim)
54 Manuel Arévalo (victim)
55 Raúl Morales (victim)

B) PECUNIARY DAMAGES

Pleadings of the Commission

262. The Commission asked the Court to set the amount of compensation for consequential damages and lost earnings in fairness. In this regard, we must take into account that as a consequence of the loss of their next of kin –who in most cases were the financial mainstay of the family-, the displacement, the persecution and the fear, the next of kin of the victims have suffered significant and decisive pecuniary losses –the assets to which the consequential damages refer were never recovered or, if they were, only precariously-, and they no longer received their customary income, necessary for their subsistence.

263. Pleadings of the representatives

a) they asked the Court to be flexible with regard to the requirement of invoices, deeds and other evidence, since the witnesses were displaced suddenly, leaving behind their home and their belongings. There are no medical care invoices either, as these families moved around constantly without a place of refuge or a decent house to live in;
b) with regard to consequential damages, the Court should take into account, inter alia, the loss of real estate due to the facts of the massacre; expenses in connection with steps taken before the authorities for them to carry out actions for justice to be done; expenses regarding treatment of health problems stemming from the facts; expenses to obtain information regarding the whereabouts of the victims and those incurred seeking their bodies; expenses caused by the murder of José Rolan Valencia and Sinaí Blanco Santamaría; expenses to ship the body of Sinaí Blanco Santamaría on a light aircraft; and expenses incurred resorting to national and international non-governmental organizations, specialized rapporteurs, persons well-known internationally, foreign authorities, to complain about the facts or to apply pressure on the authorities.
c) Marina Sanmiguel mentioned the property that she left behind after the facts that took place in July 1997, the value of which amounted to US $13,228.00; Nory Giraldo stated that after the facts she lost property amounting to US $10,714; Viviana Barrera asserted that Antonio María Barrera's property at the time is now assessed at US$ 57,450; Mariela Contreras stated that she fled the violence in Mapiripán leaving behind all her property, amounting to US $16,436; the López Pinzón stated that the loss of property and the health care expenses of Teresa López add up to US $ 24,302. However, since the receipts for some of those expenses are not

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available due to the circumstances of the displacement, the representatives asked that US $50,000 be granted to each family, in fairness, for consequential damages; and

d) bearing in mind the age and income of each victim, according to the type of activity they carried out, as well as life expectancy in Colombia at the time of the facts, the State must compensate the next of kin for lost earnings of the victims as follows:

i. José Rolan Valencia was 43 years old and earned US $ 3,447.77 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $ 120,292.87 that must be paid to the victim's spouse, Marina San Miguel Duarte, and minors Nadia Mariana, Yinda Adriana, Johna Marina, Roland Andrés Valencia Sanmiguel and Ronald Mayiber Valencia Sanmiguel, his children;

ii. Sinaí Blanco Santamaría was 57, enjoyed all his mental and physical faculties, and worked managing his property; his annual income was US $3,004, which multiplied by the years of life he would have had before him, yields the sum of US $67,927.03 that must be paid to Nory Giraldo de Jaramillo and the stepdaughter whom he raised, Carmen Johanna Jaramillo Giraldo;

iii. Antonio Maria Barrera Calle was 56 years old and earned an income of US $16,926 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $382,698.02 that must be paid to his daughter, Viviana Barrera Cruz;

iv. Hugo Fernando Martínez Contreras was 16 years old and with a life expectancy of 56.97 years more, minus two (2) unproductive years, for a productive life expectancy of 54.97 years and an income equivalent to the minimum wage US $2,365 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $130,025 that must be paid to the victim's mother, Mariela Contreras Cruz and his sisters: Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras;

v. Diego Armando Martínez Contreras was 15 years old and a life expectancy of 56.97 years more, minus two (2) unproductive years, for a productive life expectancy of 53.97 years and with an income equivalent to the minimum wage of US $2,365 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $127,636 that must be paid to the victim's mother, Mariela Contreras Cruz and his sisters: Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras;

vi. Gustavo Caicedo Rodríguez was 40 years old and earned an income of US $2,365 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $ 83,626 that must be paid to the victim's common-law spouse, Mariela Contreras Cruz, and his daughters Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras;

vii. Enrique Pinzón López was 37 years old and earned an income of US $2,956.49 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $117,372.79 that must be paid to the victim's mother and sisters, Teresa López and his sisters Luz Mery, Sara Paola, Maria Teresa and Esther Pinzón López;

viii. Jorge Pinzón López was 34 years old and earned an income of US $2,956.49 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $117,372.79 that must be paid to the victim's mother and sisters, Teresa López and his sisters Luz Mery, Sara Paola, Maria Teresa and Esther Pinzón López;

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ix. Luis Eduardo Pinzón López was 32 years old and earned an income of US $2,956.49 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $130,233.38 that must be paid to the victim's mother and sisters of the victim, that is, Teresa López and his sisters Luz Mery, Sara Paola, Maria Teresa and Esther Pinzón López;
x. José Alberto Pinzón López was 30 years old and earned an income of US $2,956.49 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $130,233.38 that must be paid to the victim's mother and sisters, Teresa López and his sisters Luz Mery, Sara Paola, Maria Teresa and Esther Pinzón López; and
xi. Jaime Riaño Colorado was between 48 and 50 years old and earned an income of US $2,956.49 yearly, which multiplied by the years of life he would have had before him, yields the sum of US $53,208 that must be paid to his common-law spouse Luz Mery Pinzón López.

264. Pleadings of the State

a) it is necessary to take into account the specific characteristics of the claimants, such as their social, professional, and economic position, as reparations are to compensate, not to enrich;
b) with regard to measures of compensation, the State will abide by the evidence submitted to the Court, regarding quantification of the pecuniary and non-pecuniary damages;
c) criteria for reparations in administrative-law proceedings have proven to be adequate and effective and are in accordance with international standards;
d) the State believes that it is not in order to set pecuniary damages based on fairness, as it is necessary to have clear evidence. If it does not exist, the victims and their successors must be allowed to prove the exact extent of said losses under domestic venue. Furthermore, the assessment of proven losses must be in accordance with the criteria for compensations established by domestic courts, as they comply with the international obligations of the State and this was the criterion applied by the representatives. In the instant case, assuming that there is a lack of authentic evidence, the theory of the "minimum standard of injury" used by the State Council could be applied;
e) the evidence submitted as grounds to corroborate ownership of the property of the Valencia Sanmiguel family is not formal evidence and it cannot be replaced by any evidence legally submitted in the proceeding. The request for consequential damages regarding the money for their house cannot be heard, as the State, through the Red de Solidaridad Social, delivered an amount of money to them, with which they purchased a house. Also, there was a court settlement hearing with Mrs. Sanmiguel;
f) the property of the Blanco Giraldo family with regard to which they request compensation is still part of the claimant's property, and if not, it was substituted by other property equivalent in value. Furthermore, said compensation must be denied because neither Nory Giraldo de Jaramillo nor her daughter can ask to be declared beneficiaries of reparations, because an out-of-court statement is insufficient to demonstrate a de facto marital union, all the more so when there is a duly conducted and certified marriage;
g) the documents submitted to prove ownership of the real estate listed by the Barrera Cruz family, in addition to not being suitable and legally established as full evidence, do not provide sufficient grounds to consider it proven that said property was under the victim's control. There are anomalies regarding the improvements to the real estate that constitute the consequential damages. On the other hand, the residence and the house that are still in Barrera's name; the next of kin of the victim continued to receive earnings generated by the commercial establishments

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identified, even though they did diminish. Also, the obligation to provide food to the children of Viviana Barrera does not pertain directly to the grandparents but rather to the parents –as the minors' father had been doing; therefore, possible compensation must be recognized as a collaboration (which, anyhow, has not been duly delimited to consider the loss proven);

h) the existence and ownership of the animals of the Caicedo Contreras family have not been proven. Furthermore, no compensation should be paid, as the property claimed was purchased with monies from illegal activities, such as growing and processing hallucinogenic substances;

i) given the inconsistencies in the documents and testimony submitted to the Court, the State asks it to dismiss the Pinzón López family's requests for compensation of losses. In this regard, there is insufficient evidence of a commitment to transfer ownership to establish said family's property rights with certainty. Likewise, payment of a new house cannot be requested as reparation for consequential damages because the State returned it by means of a subsidy for Luz Mery Pinzón through the Red de Solidaridad Social and the Instituto Nacional de Vivienda de Interés Social y Reforma Urbana (INURBE);

j) lost earnings should not include factors such as minimum wages, probable income, Christmas bonuses, service bonuses and vacations, as these are only granted to employees who work permanently for a firm, and that was not the case of these victims. Furthermore, the wage basis should reflect the certified indexes of the Departamento Administrativo Nacional de Estadística (DANE);

k) calculations by the representatives regarding the salary of Rolan Valencia, to establish his compensation, cannot be expressed in current value, as it has not been updated;

l) despite the mistake committed by the representatives in calculations for Sinaí Blanco Santamaría, the State, in good faith, estimates the losses incurred at the highest value mentioned, and does not object to the request;

m) there is insufficient evidence in the case file to justify the income of Antonio María Barrera Calle, for which reason the State requests that the probable income be set at the minimum monthly wage of that time;

n) Mariela Contreras carried out an illegal activity with her spouse Gustavo Caicedo Rodríguez. Therefore, the State asks that they be denied compensation for lost earnings and, if this request is not accepted, that he be assumed to have earned at least the monthly minimum wage in force at the time; and

o) compensation for lost earnings in the case of the Contreras family amounts to $ 481,595,515, in that of Enrique Pinzón López to $165,601,437.00, in that of Jorge Pinzón López to $165,601,437.00, in the case of Luis Eduardo Pinzón López to $183,746,683.00 and in the case of José Alberto Pinzón López to $183,746,683.00. Compensation in the case of Jaime Riaño Colorado amounts to $60,240,846.00. Lost earnings caused to the property of the conjugal partnership of Luz Mery Pinzón and the victim must not be accepted, as there is no evidence of their economic activity.

Considerations of the Court

265. In this section, the Court will rule on pecuniary damages, for which it will set the amount of compensation for the property-related consequences of the violations found in the instant Judgment, [FN282] taking into account the circumstances of the case, the evidence tendered, its jurisprudence, and the main pleadings of the Commission, the representatives and the State.

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[FN282] See Case of Yatama, supra note 7, para. 242; Case of the Indigenous Community Yakye Axa, supra note 12, para. 193, and Case of Huilca Tecse, supra note 274, para. 93.

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266. The Court agrees with the State that the evidence supplied is insufficient to establish with certainty the pecuniary losses suffered by most of the identified victims. However, it is also significant that, under the circumstances of the instant case, the next of kin of the victims were displaced from Mapiripán, for which reason it is understandable that they do not have the vouchers required. It is possible that many of them had to leave their homes abruptly, carrying with them only indispensable items. In this regard, then minor Nadia Mariana Valencia Sanmiguel stated:

During the night we did not stay at home because we were afraid. We packed some things and stayed at the healthcare center […]. Everyone was at the airport to be able to leave. [FN283]

[FN283] See statement rendered as testimony before a notary public (affidavit) by Nadia Mariana Valencia Sanmiguel on February 4, 2005 (file with statements rendered before or authenticated by a notary public, page 4536).

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267. There is, in fact, insufficient evidence to establish the lost earnings, the ages or the activities of most of the victims. In other words, the Court does not have sufficient grounds to set compensation in favor of most of the victims for pecuniary losses, for which reason it will set the respective amounts in fairness for those cases regarding which the Court has some evidence. On the other hand, this does not affect ordering of compensation and reparations in their favor for non-pecuniary damages in this proceeding, or whatever is decided under domestic venue, as was pointed out (supra para. 247).

268. With regard to the displaced next of kin, the Court notes that it was the next of kin themselves, and not the representatives, who mentioned at the public hearing that they had received help from the State, to a lesser extent, in view of their situation as such.

269. With regard to the settlement agreements reached in the administrative-law proceedings begun by the next of kin of Sinaí Blanco Santamaría, José Rolan Valencia and Álvaro Tovar Muñoz (supra paras. 96.130 and 96.131), the Court asserts the principle according to which compensations must involve neither enrichment nor impoverishment for the victim or his heirs. As pointed out (supra para. 207), said agreements set compensation for pecuniary and moral damages, including some of the aspects covered by reparations for pecuniary and non-pecuniary damages, for which reason the Court will take into account the cases of those persons who have benefited from said agreements in those administrative-law proceedings, when it orders the respective reparations.

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270. With regard to the administrative-law proceedings that are still pending with regard to the death of victims of the Mapiripán Massacre, the Court will order the respective reparations in this Judgment, whatever their current state. When the State makes those payments, it must report this to the courts that are hearing said proceedings for them to decide as appropriate.

271. Nory Giraldo de Jaramillo stated that she incurred expenses to transport Sinaí Blanco's body from Mapiripán for burial; nevertheless, her daughter stated that her stepfather's family covered those expenses.On the other hand, the Court does not know why Giraldo refused to settle with the State in the administrative-law proceeding.

272. Marina Sanmiguel Duarte incurred expenses for burial after the execution of José Rolan Valencia. However, like other next of kin, compensation was ordered in the administrative-law proceedings for property-related damages as a consequence of her spouse's death (supra para. 96.131).

273. The Pinzón López sisters, Luz Mery, Esther, Paola and María Teresa, in turn, incurred expenses in connection with the illness and death of their mother, Teresa López de Pinzón, as well as those caused by the displacement of some of them. Furthermore, Mariela Contreras Cruz lost her lands and other property and incurred expenses due to her displacement together with her family.

274. Bearing in mind the circumstances of the case, the Court deems it appropriate to order the State, in fairness, to pay US $5,000.00 (five thousand United States dollars) as compensation to Luz Mery Pinzón López, Esther Pinzón López, Paola Pinzón López and María Teresa Pinzón López and US $20,000.00 (twenty thousand United States dollars) to Mariela Contreras Cruz.

275. On the other hand, the Commission and the representatives requested compensation for the lost earnings of Antonio María Barrera Calle, Jaime Riaño Colorado, Enrique Pinzón López, Jorge Pinzón López, Luis Eduardo Pinzón López, José Alberto Pinzón López, Gustavo Caicedo Rodríguez, Diego Armando Martínez Contreras and Hugo Fernando Martínez Contreras (supra paras. 261 and 262 d).

276. With regard to minors Diego Armando Martínez Contreras and Hugo Fernando Martínez Contreras, mentioned in the previous paragraph, there is no certainty regarding the activity or profession they might have practiced in the future. The Court deems that lost earnings must be based on evidence that establishes losses with certainty. [FN284]

[FN284] See Case of the "Juvenile Reeducation Institute", supra note 4, para. 288; Case of Molina Theissen, supra note 5, para. 57, and Case of Bulacio, supra note 193, para. 84.

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277. In the case of the other victims mentioned in paragraph 274 of this Judgment, while in some cases there is evidence regarding the activities they carried out or their ages (supra paras. 96.143, 96.146, 96.148 to 96.152, 96.158, 96.160 and 96.161), there is insufficient evidence to establish the income lost at the time of the facts, for which reason the Court will take into

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account, to equitably estimate the pecuniary losses caused by the deaths of said persons and those of the children mentioned in the previous paragraph, inter alia, the minimum wage in force in Colombia, life expectancy in Colombia in 1997, the circumstances of the case and, in those cases in which it has been established, the ages of the victims and their activities. [FN285]

[FN285] See Case of Carpio Nicolle et al., supra note 261, paras. 106 to 109; Case of Tibi, supra note 16, para. 236, and Case of the "Juvenile Reeducation Institute", supra note 4, para. 289, Case of the 19 Tradesmen, supra note 190, para. 240.

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278. Therefore, in fairness and based on the proposals made by the State and by the representatives (supra paras. 264.o) and 263.d)), the Court sets the following amounts for pecuniary damages of the following identified victims:

Antonio María Barrera Calle	US $ 350,000.00
Jaime Riaño Colorado	US $ 35,000.00
Enrique Pinzón López	US $ 80,000.00
Jorge Pinzón López	US $ 80,000.00
Luis Eduardo Pinzón López	US $ 90,000.00
José Alberto Pinzón López	US $ 90,000.00
Gustavo Caicedo Rodríguez	US $ 60,000.00
Diego Armando Martínez Contreras	US $ 100,000.00
Hugo Fernando Martínez Contreras	US $ 100,000.00

C) NON-PECUNIARY DAMAGES

279. Pleadings of the Commission

a) the Court must order payment of compensation for non-pecuniary damages, in fairness and bearing in mind the brutal characteristics of the instant case, the intensity of the suffering caused by the facts to the victims and their next of kin, alteration of the living conditions of the next of kin, and the other non-pecuniary and financial or property-related consequences for the next of kin. Therefore, the Court must take into account the collective, unidentified, and individualized perspectives. In situations such as those suffered by the survivors and the next of kin of the victims, the grief and its effects transcend the sphere of the individual, reaching that of the family and community;

b) the consequences of the damage stemming from the massacre are various, including the physical and moral damage inflicted on the direct victims; the moral damage inflicted on those closest to them; detriment to the pecuniary situation of the next of kin of the victims; and fear amongst the inhabitants of the town; and

c) the next of kin of the victims have suffered their loss under especially traumatic and violent circumstances, also undergoing a situation of terror and uncertainty that led to their own displacement and, in many cases, to remaining silent to protect themselves. Furthermore, the slowness and difficulties in the development of the investigations and the fact that only a small

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number of those responsible have been prosecuted and even less have been incarcerated magnifies the suffering of the next of kin.

280. Pleadings of the representatives

a) the feelings of family disintegration, insecurity, frustration, anguish and powerlessness of these victims stemmed from several situations: (i) loss of a beloved one; (ii) the brutality of the facts; (iii) the threats, harassment, and attempts against their lives after the bloody facts; (iv) the fact that they were forced into displacement from their place of residence; (v) the difficulties they suffered due to the displacement, such as stigmatization, unemployment, hunger, family separation, lack of access to healthcare services and education, lack of housing, among other situations; (vi) denial of justice; (vii) impossibility, to date, of knowing the whereabouts of those missing;
b) the families underwent treatment with psychologists and therapists due to the impact of the facts and the way their next of kin were tortured, murdered, and forcibly made to disappear. This causes mental disorder in any human being;
c) the disappearances caused grave harm to each and every next of kin who experienced anguish and constant anxiety for not knowing the whereabouts of their beloved ones. Likewise, the situation of the victims whose relatives were made to disappear during the facts in Mapiripán is one of uncertainty that "places the family in an impossible position of never completed grieving, worsens the suffering, and obstructs the grieving process;"
d) the brutality of the crime must be taken into account for purposes of compensation:
i. José Rolan Valencia was taken out of his house in front of his spouse and small children, mistreated and abused, his hands were tied behind his back, after being subjected to cruel torture his decapitated body was left on the landing strip in the municipality of Mapiripán, where it was found by his spouse. Therefore, the State must pay as compensation to José Roland Valencia, US $ 100,000.00, distributed between his spouse Marina Sanmiguel Duarte, and his children Nadia Marina; Yinda Adriana; Johanna Marina; Roland Andrés and Ronald Meyiber Valencia Sanmiguel; to Marina Sanmiguel, US $ 80,000.00; to Nadia Marina; Yinda Adriana; Johanna Marina; Roland Andrés and Ronald Meyiber Valencia Sanmiguel, US $ 50,000.00 each, for a total amount of US $ 250,000.00;
ii. Sinaí Blanco Santamaría, an elderly man, was taken out of his home by the paramilitary and subjected to long hours of torture. His decapitated body was bound in the middle of the town by his spouse Nory Giraldo. Therefore, the State must pay as compensation to Sinaí Blanco Santamaría, US$100,000.00, distributed between his spouse Nory Giraldo de Jaramillo and his stepdaughter Carmen Johanna Jaramillo Giraldo; to Nory Giraldo de Jaramillo, common-law spouse, US$ 80,000.00; to Carmen Johanna Jaramillo Giraldo (stepdaughter), US$ 30,000.00;
iii. Antonio María Barrera was subjected to long torture sessions, his aggressors tore off his testicles, dismembered his body, and threw it into the Guaviare River, without allowing anyone to remove the body, which has not been found to bury it. Therefore, the State must pay as compensation to Antonio Maria Barrera, US$ 100,000.00, given to his daughter Viviana Barrera Cruz; to Viviana Barrera Cruz, US$ 80,000.00;
iv. the forced disappearance of Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras and Gustavo Caicedo Rodríguez shows the cruelty of the actions by the aggressors and therefore the grave moral damage caused by that situation to their next of kin.

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Therefore, the State must pay as compensation for Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras and Gustavo Caicedo Rodríguez, the equivalent of US$ 100,000.00 each, distributed between their mother and common-law spouse Mariela Contreras Cruz and their siblings and children respectively: Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Gustavo Caicedo Contreras, and Rusbel Asdrúbal Martínez Contreras; to Mariela Contreras Cruz, mother of minors Hugo Fernando Martínez Contreras and Diego Armando Martínez Contreras, and common-law spouse of Gustavo Caicedo Rodríguez, US$ 80,000, for each of the victims, for a total amount of US$ 240,000; to Yur Mary Herrera Contreras, Zuli Herrera Contreras, Maryuri Caicedo Contreras, Gustavo Caicedo Contreras and Rusbel Asdrúbal Martínez Contreras, sisters and stepdaughters raised by the victims, US $ 30,000 each, for a total amount of US $ 90,000.00 for each of the petitioners, which multiplied by five, adds up to US$ 450,000.00;

v. the physical and psychological suffering of siblings Enrique Pinzón López; Jorge Pinzón López; Luis Eduardo Pinzón López, José Alberto Pinzón López, as well as of Jaime Riaño Colorado, shows their unbearable moral suffering. Therefore, the State must pay as compensation to Enrique Pinzón López; Jorge Pinzón López; Luis Eduardo Pinzón López, José Alberto Pinzón López, US$ 100,000.00 each, distributed between their mother Teresa López Triana and their sisters: Maria Teresa Pinzón López, Sara Paola Pinzón López. Esther Pinzón López and Luz Mery Pinzón López; US $ 50,000.00 (fifty thousand dollars) to the mother, Teresa López Triana, for each of the victims, for the moral damage suffered, which adds up to US $200,000.00; to each of the sisters María Teresa Pinzón López, Sara Paola Pinzón López, Esther Pinzón López and Luz Mery Pinzón López, for the moral damage suffered, in addition to the threats, harassment, and displacement suffered and which continue to date, US $30,000.00 for each of their missing brothers, for a total amount of US $120,000.00, for each of the sisters respectively; and to Jaime Riaño Colorado US$ 100,000.00, given to Luz Mery Pinzón; to Luz Mery Pinzón, for the moral damage suffered due to the disappearance of her common-law spouse Jaime Riaño Colorado, US $50,000.00;

e) the executed or missing victims who were individually identified suffered unimaginable fear and anguish knowing that they left their next of kin in a vulnerable state. Bearing in mind the gravity of the facts acknowledged by the State, including detentions, tortures, and death or disappearance, they asked for US$ 100,000.00 each as compensation for José Rolan Valencia, Sinaí Blanco Santamaría, Antonio María Barrera, Jaime Riaño Colorado, Enrique Pinzón López, Jorge Pinzón López, Luis Eduardo Pinzón López, José Alberto Pinzón López, Fernando Martínez Contreras, Diego Martínez Contreras, and Gustavo Caicedo Rodríguez; and

f) the physical harm affects the individual's psychosomatic aspect and this, in turn, affects the person's physical health, harming it in various degrees and intensities. The jurisprudence of the Court has been recognizing that the physical ailing caused by the terrible grief due to the forced disappearance of a beloved one must to a large extent be redressed. With regard to the victims' health, there is a gradual deterioration, and in the case of Teresa López de Pinzón it caused the victim's death due to the loss of 4 sons in the facts in Mapiripán.

281. Pleadings of the State

a) the monetary standards of the Colombian State Council should be adopted with regard to the moral damages of the victims and their next of kin;

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b) the State will abide by the evidence submitted to the Court regarding non-pecuniary damages;
c) the State is conducting a study in each of the proceedings under administrative-law venue, to explore the possibility of a settlement, and with this measure to redress the next of kin of the victims, following the criteria for comprehensive reparations;
d) the amounts recognized in similar cases (19 Tradesmen) have led to a shift from domestic to international jurisdiction, primarily moved by financial reasons. This breaches the high principles of both International Human Rights Law and domestic legislation, especially that of equality, since those who obtain access to these instances under sponsorship of organizations that specialize in human rights obtain costly settlements that, in the milieu in which these payments will be received, may constitute enrichment and not just compensation; and
e) the fiscal effects of the new judgments on the public treasury may affect programs and projects that should benefit the greatest possible number of persons, because scarce existing resources will be used to pay compensation for the damage suffered by a few. Likewise, in view of the fiscal deficit, the State requested two years for compliance with the judgment and for the amount payable to be stated in Colombian legal currency.

Considerations of the Court

282. Non-pecuniary harm can refer both to the suffering and the distress caused to the direct victims and their next of kin, as well as to detriment to the individuals' very significant values, and also to non-pecuniary changes in the conditions of the victims' existence. Since it is not possible to establish a precise monetary equivalent for non-pecuniary harm, for purposes of comprehensive reparations for the victims, it can only be compensated for in two ways. First, by means of payment of an amount set by the Court by reasonably applying judicial discretion and in terms of fairness. And secondly, by carrying out acts or works that are public in their scope or repercussions, such as sending a message of official reproval of the human rights violations involved and of commitment to efforts to avoid their repetition, with the effect of remembrance of the victims, acknowledgment of their dignity and consolation to their next of kin. The Court will address the first aspect of reparation of non-pecuniary damages in this section, and the second one in the section on other forms of reparation in this chapter. [FN286]

[FN286] See Case of Acosta Calderón, supra note 7, para. 158; Case of Caesar, supra note 274, para. 125, and Case of Huilca Tecse, supra note 274, para. 96.
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283. As the Court has pointed out in other cases, [FN287] the non-pecuniary harm to the victims is evident, as it is in accordance with human nature for any person subjected to brutal acts in the context of the instant case to feel deep suffering, moral anguish, terror, and insecurity, for which reason there is no need for evidence of this damage.

[FN287] See Case of Tibi, supra note 16, para. 244; Case of the "Juvenile Reeducation Institute", supra note 4, para. 300, and Case of the Gómez Paquiyauri Brothers, supra note 182, para. 217.
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284. According to what was established, before being executed the victims were deprived of their liberty and subjected to torture or to grave cruel, inhumane or degrading treatment. Signs of torture and the conditions in which some of the next of kin and witnesses found the bodies show not only the atrocious and barbarous nature of the facts, but also that, in the least cruel of these situations, the victims suffered grave psychological torture by witnessing the execution of other persons and foreseeing their fatal destiny, when they were subjected to the conditions of terror that reigned in Mapiripán between July 15 and 20, 1997. The next of kin of the victims, in turn, have suffered harm as a consequence of the disappearance and execution of the victims, due to lack of support of State authorities in the search for those missing, and the fear to begin or continue the search for their next of kin in face of possible threats. Since most of the victims are missing, the next of kin have been unable to adequately honor their deceased beloved ones. Lack of a complete and effective investigation of the facts and partial impunity constitute a source of additional anguish and suffering for the victims and their next of kin. All the above, in addition to affecting their physical and psychological integrity, has had an impact on their social and work relations, has altered the dynamics of their families and, in certain cases, has endangered the lives and the right to humane treatment of some of their members (supra para. 96.176).

285. International jurisprudence has repeatedly established that the judgment constitutes per se a form of reparation. [FN288] However, given the gravity of the facts in the instant case and the situation of partial impunity, the intensity of the suffering caused to the victims, changes in the conditions of their existence and other pecuniary or non-pecuniary consequences, the Court deems it necessary to order payment of compensation for non-pecuniary damages, in fairness. [FN289]

[FN288] See Case of Acosta Calderón, supra note 7, para. 159; Case of Caesar, supra note 274, para. 126, and Case of Huilca Tecse, supra note 274, para. 97.
[FN289] See Case of Acosta Calderón, supra note 7, paras. 159 to 160; Case of Caesar, supra note 274, para. 126, and Case of Huilca Tecse, supra note 274, para. 97.

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286. To assess the non-pecuniary harm caused in the sub judice case, the Court has taken into account the statements of the witnesses, whether through sworn statements, statements before notary publics, or testimony before the Court, that the harm caused is representative of that suffered by the rest of the victims, most of whom lived in or near Mapiripán.

287. Once again, the Court takes into account that the settlements reached under administrative-law venue set compensation for moral damages in favor of the next of kin of Álvaro Tovar Muñoz, Sinaí Blanco Santamaría and José Rolan Valencia (supra paras. 96.130, 96.131 and 207). Since these compensations were ordered only in favor of the next of kin of those victims and the content of those settlements does not warrant the conclusion that they also compensated for the harm directly suffered by those gentlemen, the Court will order compensation for the non-pecuniary harm suffered directly by Álvaro Tovar Muñoz, Sinaí Blanco Santamaría and José Rolan Valencia.

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288. Taking into account the various aspects of the harm alleged by the Commission and by the representatives, the Court will set the amount of compensation for non-pecuniary damages in fairness, and this amount must be paid according to the provisions of paragraph 259 of the instant Judgment, and in accordance with the following parameters:

a) for the approximately 49 victims that the State has acknowledged were executed or made to disappear, whether or not they have been individually identified, the Court orders payment of US$ 80,000.00 (eighty thousand United States dollars);
b) at the time of their disappearance, two of the victims were minors: Diego Armando Martínez Contreras and Hugo Fernando Martínez Contreras. Therefore, it must be assumed that the suffering caused by the facts in this case was especially intense with regard to said minors. For this reason, compensation for the harm mentioned in the previous paragraph must be set in fairness, adding US$ 10,000.00 (ten thousand United States dollars), which will accrue to the aforementioned amount;
c) some of the next of kin who personally suffered the facts in the massacre have been identified and have been declared victims of violation of their right to humane treatment, which must be taken into account. While it is impossible for the Court to clearly establish which next of kin of the victims, whether or not they have been individually identified, were in Mapiripán during the days in which the facts took place, it is reasonable to assume that under the circumstances of this case all the next of kin have deeply suffered the damage caused by the grief of losing a beloved one. Furthermore, said next of kin have suffered violations of the right to fair trial and the right to judicial protection; moreover, one of the objectives of the massacre was to terrorize the inhabitants, and this has led many of the next of kin to avoid filing complaints regarding what happened, to date (supra para. 96.47 and 96.175). Likewise, the Court takes into account that the remains of the vast majority of the victims have not been identified and delivered to their next of kin; only the next of kin of Sinaí Blanco Santamaría and José Rolan Valencia were able to bury the remains of their beloved one. Therefore, the Court deems that the harm caused must be compensated by payment, in favor of each next of kin, of the following amounts:
    i. US$ 50,000.00 (fifty thousand United States dollars) in the case of the mother, the father, the spouse or spouse or the common-law spouse and of each son and daughter;
    ii. US$ 8,500.00 (eight thousand five hundred United States dollars) in the case of sister or brother; and
    iii. in addition to these amounts, US$ 5,000.00 (five thousand United States dollars) will be paid to those who were boys and girls at the time of the massacre and lost beloved ones, as said suffering increased due to their situation as minors and the lack of protection by the State.

289. The Court will apply the provision set forth in the chapter on beneficiaries to the next of kin of the victims who have not been individually identified in this proceeding, which is that to receive the respective payments they must appear before the officials in charge of the official mechanism established for that purpose, within 24 months of the date when the State notifies them that their next of kin has been individually identified, and they must prove their relationship to or kinship with the victim, by means of adequate identification or of two attesting witnesses, as were the case (supra para. 257.b)).

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290. Based on the above, compensation for non-pecuniary damages due to the violations found in the instant case, in favor of the victims who were individually identified and their next of kin, will be as follows:

Non-Pecuniary Damages	
Sinaí Blanco Santamaría	US $80,000.00
Nory Giraldo de Jaramillo (spouse)	US $50,000.00
Carmen Johanna Jaramillo Giraldo (stepdaughter)	US $55,000.00
Álvaro Tovar Muñoz	US $80,000.00
José Rolan Valencia	US $80,000.00
Gustavo Caicedo Rodríguez	US $80,000.00
Diego Armando Martínez Contreras	US $90,000.00
Hugo Fernando Martínez Contreras	US $90,000.00
Mariela Contreras Cruz (spouse)	US $150,000.00
Yur Mary Herrera Contreras (stepdaughter and sister)	US $67,000.00
Zuli Herrera Contreras (stepdaughter and sister)	US $67,000.00
Maryuri Caicedo Contreras (daughter and sister)	US $72,000.00
Gustavo Caicedo Contreras (son and brother)	US $72,000.00
Rusbel Asdrúbal Martínez Contreras (stepson and brother)	US $72,000.00
Enrique Pinzón López	US $80,000.00
Jorge Pinzón López	US $80,000.00
Luis Eduardo Pinzón López	US $80,000.00
José Alberto Pinzón López	US $80,000.00
Teresa López Triana de Pinzón (mother)	US $200,000.00
María Teresa Pinzón López (sister)	US $34,000.00
Sara Paola Pinzón López, (sister)	US $34,000.00
Esther Pinzón López, (sister)	US $34,000.00
Luz Mery Pinzón López (sister)	US $34,000.00
Jaime Riaño Colorado	US $80,000.00
Luz Mery Pinzón López (spouse)	US $50,000.00
Antonio María Barrera Calle	US $80,000.00
Viviana Barrera Cruz (daughter)	US $50,000.00
Omar Patiño Vaca	US $80,000.00
Eliécer Martínez Vaca	US $80,000.00
Manuel Arévalo	US $80,000.00
Edwin Morales	US $80,000.00
Raúl Morales	US $80,000.00
Jaime Pinzón	US $80,000.00
Ana Beiba Ramírez	US $80,000.00
Uriel Garzón	US $80,000.00

D) OTHER FORMS OF REPARATION
(Measures of satisfaction and guarantees of non-recidivism)

291. Pleadings of the Commission

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a) the Court must order comprehensive reparation measures that constitute a message against impunity. These must include establishment and strengthening, when this is necessary, of judicial and administrative mechanisms to enable the alleged victims, or their next of kin, to obtain reparations by expeditious, fair, inexpensive and accessible ex officio mechanisms;
b) it is necessary to take into account the harm caused by the inhabitants' fear, as well as the displacement that, in many cases, has resulted from the massacre and has brought grave consequences to family groups;
c) the Commission points out that the process of demobilizing paramilitary groups includes negotiations on benefits for their members in legal proceedings;
d) the State must ensure that paramilitary presence is eradicated through State action and that those who have been displaced by violations in the instant case may, if they so wish, return to Mapiripán;
e) the amounts allegedly paid are not in connection with the same matter being heard by the Court, nor have they been set in accordance with the Court's criteria on reparations. Furthermore, the subject matter of this proceeding, regarding the international responsibility of the State for violating its obligations under the American Convention, is different from the subject matter of the administrative-law proceeding;
f) the Commission recognizes the value of the State's expression of regret for the loss of human lives and of its apology, as this is an initial step in the process of historical remembrance of the fatal victims and of satisfactions owed to their next of kin and to the survivors;
g) the Court must establish the general criteria for individual identification and establishment of the beneficiaries of the reparations;
h) the measures of satisfaction applicable in the instant case are acknowledgment of responsibility, apology, Publicity, and commemoration. As other forms of reparation the State must:

i. conduct a serious, complete, and effective investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as that of individuals whose acquiescence made it possible for the massacre to take place. This investigation must lead to criminal punishment for those responsible;

ii. effectively complete the investigation underway, in accordance with the international obligations that it has freely undertaken;

iii. take such steps as may be necessary to identify the victims so that their next of kin can complete the grieving process due to their disappearance and thus enable, to some extent, reparation of the damage caused;

iv. execute the arrest warrants already issued by court authorities, including that of paramilitary leader Carlos Castaño;

v. hold a public act of acknowledgment of international responsibility and explanation of its scope and consequences by a high official of the State in the community of Mapiripán. It must also publish the operative part of the judgment and the chapter on proven facts in the official gazette Diario Oficial and in a nationally distributed daily;

vi. carry out, in consultation with the next of kin, a symbolic acknowledgment in remembrance of the victims of the massacre;

vii. carry out measures for the occupational and medical rehabilitation of the victims of the facts, as well as steps to restore the victims' dignity and reputation;

viii. take steps to restore the community of Mapiripán, in connection with the collectivity's public health, education, and work; and

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ix. take adequate measures to ensure that the unidentified victims and their next of kin are not deprived of the fair reparations owed to them; and

i) to put into effect these obligations a project must be created –within three months time- with government funds, for a maximum period of five years, to attain the general objective. Its objective will be comprehensive reparation of the consequences of the massacre, that is, of the victims who have not been identified in the proceeding before the inter-American system; caring for the population displaced by the massacre; and providing healthcare, education, and employment plans in Mapiripán. Yearly reports must be sent to the Court, and the parties may add their comments if there is any disagreement. Three months after establishment of this Project, it must be submitted by the State to the Court, for the latter to take it into account, together with the observations of the other parties.

292. Pleadings of the representatives

a) the State must issue orders for a number of measures of satisfaction:

i. to carry out a public act of acknowledgment of responsibility regarding the facts in the massacre and of apology to the victims and their next of kin, in the presence of the highest authorities of the State;

ii. to order a Commemoration of the National Day of Victims of Violations of Human Rights and of International Humanitarian Law, and "that the National Anthem be sung at said act, with the tenth rather than the first strophe, as [they deem that] the former is more in accordance with the current spirit of [Colombian] historical reality and reflects the right of the victims to learn the truth and for justice to be done. There is no need to amend the Constitution and the Law [for this purpose], only to issue a presidential directive;" and

iii. to order community support measures and name one or more of the buildings in remembrance of one of the victims;

b) the State must undertake to ensure non-repetition of the facts, including adjusting domestic legislation and the demobilization program to international standards regarding the rights to truth, justice, and reparations for the victims; full compliance with Colombian constitutional doctrine regarding military venue and the jurisprudence of the inter-American system regarding the scope of the competence of said venue;

c) the State must hold a public trial within a reasonable time against all the masterminds and direct perpetrators, and execute sentences that are proportional to their crimes;

d) the State must remove de facto and legal obstructions that have impeded an effective criminal proceeding:

i. it must investigate and prosecute all the members of the National Army who did not take the steps required to cooperate with the judicial authorities and avoid obstruction of evidence gathering by the paramilitary;

ii. it must effectively execute the arrest warrants already issued by court authorities, including that regarding the situation of paramilitary leader Carlos Castaño; and

iii. it must adopt such security measures as may be necessary to protect the lives and the physical integrity of the attorneys, witnesses, and State officials involved in this case; and

e) the State must take such steps as may be necessary to find and identify the missing victims, and those whose dismembered and eviscerated bodies were thrown into the Guaviare River, so that their next of kin can complete the grieving process for the disappearance of their beloved ones and thus enable some degree of reparation of the harm caused. In this regard, the

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State must establish a committee to seek and identify the victims and next of kin and it must set up a fund to pay compensations due to the next of kin of as yet unidentified victims;

293. Pleadings of the State

a) it is necessary to appreciate and give full effect to the acknowledgment of responsibility and to the apology made during the public hearing;
b) the State has conducted serious and impartial investigations through its competent authorities and has attained decisive results. Actions by the judicial authorities in charge of the investigation and prosecution of those responsible have been effective, despite the complexity of the situation. Furthermore, it is necessary to recognize and support actions by the authorities to protect those affected or threatened by violence;
c) with the aim of verifying and consolidating information on the alleged victims, between January 13 and 15, 2005 a technical-scientific team was set up, inter alia, to establish the feasibility of exhumation of bodies or finding osseous remains. Definitive reports are awaited;
d) the Mayor's Office in Mapiripán posted announcements requesting information on anyone who knew persons who disappeared during the facts of July 1997 and to date no complaints have been filed;
e) the location and destination of some of the individuals who allegedly disappeared at the time of the facts have been established;
f) except in the case of the Valencia Sanmiguel family, it has not been proven that the next of kin of the other victims were in their home in the municipality at the time of the facts;
g) there is a national policy regarding prevention and protection with regard to the phenomenon of forced disappearance, stemming from the violent situation. In the framework of its policy to deal with displacement, the State adopted the National Plan for Comprehensive Care of the Population Displaced by Violence (Decree 250 of January 2005). Likewise, there has been progress regarding compliance with the orders issued in judgment T-025 of 2004 by the third chamber of the Constitutional Court. The State seeks to follow and implement the United Nations' Guiding Principles on Internal Displacement;
h) there has been a coordinated effort with the Personería in Mapiripán regarding delivery of humanitarian emergency aid, consisting of 1 to 3 monthly legal minimum wages, depending on composition of the household. This humanitarian aid is given only once, as it is an emergency financial contribution that allows them to address the need for food and other immediate needs. Efforts have also been made to provide said aid at the place of origin of the displaced persons, so they do not have to go from Villavicencio to Bogotá. The Personería Municipal asked a financial institution to open individual accounts, at no cost, for each family, to deposit the financial aid;
i) the Red de Solidaridad Social grants humanitarian assistance to the victims covered by Article 15 of Law 418 of 1997, extended by laws 548 of 1999 and 782 of 2002. There have been three requests for humanitarian aid for deaths in the massacre that took place in the municipality of Mapiripán, two of which were paid and in the other case payment is pending;
j) works are underway through the social component of the Plan Colombia for the municipal capital, including a modular park, a communal kiosk, two public bathroom facilities, and an educational module; construction of the aqueduct was also approved for the inspections office of the Cooperative;
k) it is not true that Mapiripán has become a ghost town; instead, its life is normal and prosperous, given the circumstances of widespread violence and economic crisis in the country.

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With regard to the programs to care for the population in the municipality of Mapiripán, there were two allocations, both of them in 1998;

l) the State continues to address the needs of the municipality of Mapiripán, especially because it is a vulnerable area due to the presence of illegal armed groups. Security conditions there have improved during 2005 thanks to the presence of the security forces in the area and joint operations conducted;

m) by means of Decree 2429 of 1998, the national government created the Special Committee to further the investigations on violations of human rights and of international humanitarian law, for cases such as this one to be elucidated promptly and for those responsible to be punished. The instant case was one of those chosen;

n) a bill is now being discussed regarding public policy in the struggle against impunity for violations of human rights and international humanitarian law;

o) the State is considering the appointment of a high commissioner for victims to coordinate and implement a comprehensive policy on reparations. It is also considering a plan to ensure representation of the victims in the criminal and administrative-law proceedings; to identify and remove obstacles that up to now have made said representation difficult; to further a plan to seek friendly settlements; to establish a trust fund for reparations to the victims in terms that are sufficient, effective, prompt, and proportional to the gravity of the violation and the type of injury suffered;

p) the State highlights the policy of dialogue with the main groups outside the Law, as well as constant reduction of violence indicators. Democratic security does not deny the possibility of dialogue with illegal armed groups. In this regard, there is an ongoing dialogue process with the self-defense groups that began under the previous government, but subjecting them to conditions imposed by the current government, such as a cease-fire; and

q) the State rejects the other parties' considerations regarding the current peace process, as it is not a matter addressed by the American Convention, for which reason it cannot be subject to a ruling in a specific case. The administrative decision that formally begins a peace process has two main effects: it suspends the arrest warrants against representative members of the illegal armed groups, and it enables areas to be defined for relocation of those in arms, with a territorial effect on the arrest warrants, which are only suspended in that area, setting aside the status of members representing the men located there. The process of individual and collective demobilization is moving forward very successfully, expressing the spirit of and will for reconciliation and sustainability of the peace process. The country has understood that this public policy is a feasible, flexible, and rapid option for citizen reinsertion, resocialization and reconstruction. The State understands that there is no possibility of granting any type of legal benefits to persons who are being investigated for or have been convicted of atrocious crimes.

Considerations of the Court

294. In this section, the Court will order measures of satisfaction to redress non-material damages, those that are non-pecuniary, as well as measures that are public in their scope or repercussions. [FN290] These measures are especially significant in the instant case due to the extreme gravity of the facts.

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[FN290] See Case of Acosta Calderón, supra note 7, para. 163; Case of the Moiwana Community, supra note 4, para. 201, and Case of Caesar, supra note 274, para. 129.

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a) Obligation of the State to investigate the facts in the case, to identify, prosecute and punish those responsible

295. The Court has established in this Judgment that the investigation carried out by Colombia regarding the massacre that took place in Mapiripán between July 15 and 20, 1997 does not fulfill the standards of access to justice and the right to judicial protection set forth in the American Convention (supra para. 241). Specifically, the Court pointed out that the violations found regarding the victims' rights to personal liberty, to humane treatment, and to life, are aggravated by non-compliance with the duty to provide protection and with the duty to investigate the facts, as well as by the lack of effective judicial mechanisms for this purpose and to punish all those responsible for the Mapiripán Massacre. Thus, the Court found the State responsible for breaching Articles 8(1) and 25 of the Convention, in combination with Article 1(1) of that same Convention.

296. The Court has appreciated the partial effects of the criminal proceeding. Nevertheless, over eight years since the massacre took place, partial impunity prevails and the criminal proceeding lacks effectiveness, which is reflected in two aspects: first of all, most of those responsible have not been included in the investigations and they have not been identified or prosecuted. Secondly, impunity is reflected in the trial and conviction in absentia or the paramilitary who have benefited from ineffectiveness of the punishment (supra paras. 230, 240 and 96.126).

297. The Court reiterates that the State is under the obligation to combat this situation of impunity by all means, as it fosters chronic recidivism of human rights violations and total defenselessness of the victims and of their next of kin, who have the right to know the truth about the facts. [FN291] This right to the truth, when it is recognized and exercised in a concrete situation, constitutes an important means of reparation. Therefore, in the instant case, the right to the truth generates an expectation of the victims, which the State must satisfy. [FN292]

[FN291] See Case of the Moiwana Community, supra note 4, para. 203; Case of Carpio Nicolle et al., supra note 261, para. 261, and Case of Tibi, supra note 16, para. 255.

[FN292] See Case of the Moiwana Community, supra note 4, para. 204; Case of Carpio Nicolle et al., supra note 261, para. 128, and Case of the Gómez Paquiyauri Brothers, supra note 182, para. 261.

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298. In light of the above, the State must immediately take the necessary steps to activate and effectively complete the investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as that of the individuals whose collaboration and acquiescence made it possible for that massacre to take place. The State must complete the criminal proceeding with regard to the Mapiripán Massacre, to enable elucidation of all the facts

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and punishment of those responsible. The results of these proceedings must be made known to the public by the State, so that Colombian society can know the truth about the facts of the instant case.

299. To fulfill its obligation to investigate and punish those responsible in the instant case, Colombia must: a) remove all de facto and de jure obstacles that maintain impunity; b) use all available means to expedite the investigation and the judicial proceeding; and c) provide security guarantees to the victims, investigators, witnesses, human rights advocates, court employees, public prosecutors and other participants in the judicial process, as well as former and current inhabitants of Mapiripán.

300. According to what the State reported, the Special Committee to further the investigation of violations of human rights and international humanitarian law has chosen the case of the Mapiripán Massacre to accelerate elucidation of the facts and punishment of those responsible (supra para. 293.m)). The Court deems that this may contribute to compliance with said obligations, together with the appointment of a special Public Prosecutor, within the Human Rights Unit of the Office of the Attorney General, exclusively in charge of the investigation and furthering of the ongoing criminal proceeding.

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301. The Court notes that on June 22, 2005 the Congress of the Republic of Colombia enacted Law 975, called "Ley de Justicia y Paz", "which issues provisions for the reinsertion of members of organized armed groups outside the law, to effectively contribute to the attainment of national peace, and issues other provisions for humanitarian agreements," signed by the President of the Republic on July 25 of that same year. In this regard, the representatives filed a brief after their final written pleadings (supra para. 44), in which they pointed out that enactment of this Law constitutes a supervening fact in the instant case, since it is an additional obstacle to establishment of the truth, attainment of justice and reparations for the victims in this case, as they are not ensured the possibility of fully participating in the criminal proceeding and of receiving comprehensive reparations. Based on the above, they asked the Court to "examine the normative framework of demobilization of the paramilitary as a whole, and order that domestic legislation and the demobilization program be adjusted to international standards regarding the rights of the victims".

302. In this regard, the Commission deemed that the provisions of the Ley de Justicia y Paz do not establish incentives for those who are demobilized to extensively confess the truth regarding their responsibility, in exchange for the judicial benefits they will receive; that this massacre involved multiple perpetrators, linked to paramilitary blocks that have entered the demobilization process and, therefore, they will be beneficiaries of application of the "Justice and Peace" Law, as will agents of the State whose collaboration by action or omission is yet to be established, and that the State has the obligation to remove all factual and legal obstacles that might hinder extensive judicial elucidation of the violations of the American Convention committed in this case, prosecution of those responsible, and due reparations to the victims.

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303. The State, in turn, pointed out that enactment of Law 975 de 2005 does not constitute a supervening fact under the terms of Article 44(3) of the Rules of Procedure, as it has not been applied to the specific case, for which reason it is not possible to establish and identify the alleged violations that said application generates regarding the rights of the victims. After analyzing the scope of the Law, the State pointed out that it is not appropriate for the Court to rule on whether said Law is in accordance with the international obligations of the State regarding the American Convention in the instant case.

304. Regarding this matter, the Court reiterates its jurisprudence constante [FN293] that no domestic legal provision of law can impede compliance by a State with the obligation to investigate and punish those responsible for human rights violations. Specifically, the following are unacceptable: amnesty provisions, rules regarding extinguishment and establishment of exclusions of liability that seek to impede investigation and punishment of those responsible for grave human rights violations –such as those of the instant case, executions and forced disappearances. The Court reiterates that the State's obligation to adequately investigate and to punish those responsible, as appropriate, must be carried out diligently to avoid impunity and repetition of this type of acts (supra para. 297).

[FN293] See Case of the Moiwana Community, supra note 4, para. 206; Case of the Serrano Cruz Sisters, supra note 11, para. 172; Case of the Gómez Paquiyauri Brothers, supra note 182, para. 175; Case of the 19 Tradesmen, supra note 190, para. 262; Case of Molina Theissen. Reparations. Judgment of July 3, 2004. Series C No. 108, paras. 83 to 84; Case of Myrna Mack Chang, supra note 5, paras. 276 to 277; Case of Bulacio, supra note 193, para. 116; Case of the Caracazo. Reparations. Judgment of August 29, 2002. Series C No. 95, para. 119; Case of Trujillo Oroza. Reparations. Judgment of February 27, 2002. Series C No. 92, para. 106; Case of Barrios Altos. Interpretation of the Judgment on the Merits. Judgment of September 3, 2001. Series C No. 83, para. 15; Case of Barrios Altos, supra note 246, para. 41; Case of Castillo Páez. Reparations. Judgment of November 27, 1998. Series C No. 43, para. 105, and Case of Loayza Tamayo. Reparations. Judgment of November 27, 1998. Series C No. 42 para. 168.

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b) Identification of the victims of the Mapiripán Massacre and their next of kin

305. The Court deems it indispensable for the State, for purposes of reparation, to individually identify the victims who were executed and made to disappear, as well as their next of kin. The Court appreciates the actions undertaken by the State to recover the remains of persons executed in Mapiripán who were thrown into the Guaviare River. The State must complete said tasks, as well any others that may be necessary, for which it must resort to all possible technical and scientific means, taking into account pertinent provisions regarding this matter, such as those set forth in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. This obligation includes the duty to identify the victims listed with their first name, with a name and a nickname, with only a nickname or with a position, that is, a black man called N.N. Nelson (black man), Teresa 'la Muerte', 'la Arepa' and the 'President of Asociación Danta", Agustín N.N., el Pacho N.N., Teresa N.N or Teresa "la muerte", N.N. "la arepa", N.N. Morales, a body identified as N.N, an unidentified male, a

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woman from the corregimiento of Charras and a man from La Cooperativa N.N. (supra para. 96.52), as well as those who are individually identified after notification of the instant Judgment.

306. To make individual identification effective and feasible, the State must publish an announcement by means of a radio broadcaster, a television broadcaster and a newspaper, all of them with national coverage, stating that it is attempting to identify the victims executed or made to disappear during the Mapiripán Massacre, as well as their next of kin, with the aim of recovering the remains of the former and delivering them to the latter together with the pertinent reparations. It must take the appropriate actions to identify the next of kin of Jaime Pinzón, Raúl Morales, Edwin Morales, Manuel Arévalo, Omar Patiño Vaca, Eliécer Martínez Vaca, Uriel Garzón and Ana Beiba Ramírez, to give them the pertinent reparations. In the case of said victims who have been individually identified with their name and surname, as well as those for whom there is only a name, a name and a nickname, or only a nickname (supra para. 96.52), the State must explicitly refer to them in said public announcement. In those publications the State must specify that these persons were tortured and executed between July 15 and 20, 1997 in Mapiripán.

307. Said publications must be made for at least three non-consecutive days and within six months of notification of the instant Judgment. Likewise, each time the authorities individually identify in any way one of the fatal victims, they must take the aforementioned steps within three months time. Recordings and, when appropriate, copies of said announcements, as well precise information on the media and when they were published, must be submitted to the Court for it to take them into account in the process of overseeing compliance with this Judgment.

308. The State must also establish a genetic information system to enable establishment and elucidation of the filiation of the victims and their identification.

309. The next of kin of the victims identified after notification of the instant Judgment must appear before the official mechanism mentioned in the following section (infra para. 311) and prove their relationship with said victims. Genetic filiation or, when appropriate, pertinent documents (supra para. 257.b)), will be the suitable means to establish this.

310. When mortal remains are found and identified, the State must deliver them as soon as possible to their next of kin, once filiation has been genetically proven, for them to be honored in accordance with their respective beliefs. If no next of kin claim the remains within two years time, the State must individually place them in the cemetery in Mapiripán, with reference to the fact that he or she is an unidentified victim of the Mapiripán Massacre or –when appropriate- an unclaimed one.

c) Official mechanism to monitor compliance with the reparations ordered

311. The State must establish, within six months of notification of this Judgment, an official mechanism that will operate for two years, with participation by the next of kin of the victims of the instant case or the representatives appointed by them, in charge of the following functions:

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i. to monitor the administrative-law proceedings in connection with the facts in Mapiripán, to reach pertinent decisions in accordance with the terms of the instant Judgment;
ii. to ensure effective payment, within one year's time, of compensation and indemnification ordered in favor of the next of kin of the victims (supra paras. 259, 274, 278, 288 and 290);
iii. to follow up on State actions to search and individually identify the victims and their next of kin and to ensure effective payment, within one year of notification, of the compensation and indemnification owed to the next of kin of victims as they are identified (supra paras. 288 and 290). It must also keep a record of the next of kin as they are identified, to remain in constant contact with them to ensure that they are not threatened, even more so after they have received the respective compensation;
iv. to take such steps as may be necessary to ensure effective treatment required by the next of kin of the victims (infra para. 312); and
v. to coordinate such actions as may be necessary for the next of kin of the victims, as well as other former inhabitants of Mapiripán, who have been displaced, to be able to return safely to Mapiripán, if they wish to do so (infra para. 313).

d) Adequate treatment of the next of kin of the victims

312. The Court deems that it is necessary to order a measure of reparation to seek a reduction of the psychological problems of all the next of kin of the victims who were executed or made to disappear. With the aim of contributing to reparation of that damage, the Court orders the State to provide adequate treatment as required by those persons, free of cost and by means of the national health services, after they consent to it, upon notification of the instant Judgment in the case of those already identified, and upon identification of others who have not yet been individually identified. This must done for as long as necessary, including medication. When psychological treatment is provided, the specific circumstances and needs of each person must be taken into account, so they are given collective, family and individual treatment, as agreed with each one of them and after an individual evaluation.

e) State guarantees of safety of the former inhabitants of the municipality of Mapiripán who decide to return

313. The Court is aware that inhabitants who left Mapiripán do not wish to return to the town because they are afraid that they will continue to be threatened by the paramilitary. It is possible that said situation will not change until an effective investigation and judicial proceeding have been completed, resulting in elucidation of the facts and punishment of those responsible. When the former inhabitants decide to return to Mapiripán, the State must guarantee their security. For this, the State must send official representatives to Mapiripán every month during the first year, to verify order and conduct consultations with the residents in the town. If during these monthly meetings the townspeople express concern regarding their safety, the State must take such steps as may be necessary to ensure it, and these actions will be designed in consultation with the beneficiaries of the measures.

f) Public apology and acknowledgment of international responsibility

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314. For purposes of a public apology for the facts in the Mapiripán Massacre to the survivors and the next of kin of the victims, the Court appreciates the partial acknowledgment of international responsibility by the State during the public hearing on March 7, 2005 with regard to the instant case. At that time, the State expressed that:

It asserts the State's policy of promoting and protecting human rights, and it expresses its deep respect and sympathy for the victims of the facts that took place in Mapiripán in July 1997, and it evokes their memory to state its regret and to apologize to their next of kin and to Colombian society.

g) Monument

315. The State must build an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, as a measure to prevent such grave events happening in the future. Said monument must be placed in an appropriate public space in Mapiripán, within a year of notification of the instant Judgment.

h) Human rights education

316. Bearing in mind that the Mapiripán Massacre was committed by paramilitary who acted with the collaboration, tolerance and acquiescence of State agents, breaching the imperative provisions of International Law, the State must take steps to train the members of its armed forces and of its security agencies regarding the principles and provisions for protection of human rights and of international humanitarian law and on the limits to which it must be subject. Therefore, the State must implement, within a reasonable time, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all hierarchical levels.

317. Said programs must specifically refer to the instant Judgment, to international human rights instruments and to international humanitarian law. In this regard, the Constitutional Court of Colombia has pointed out, with regard to the obligations derived from Protocol II to disseminate international humanitarian law, that knowledge of said law "is an essential requirement for it to be respected by the parties that oppose each other. Therefore […] all humanitarian law agreements attach a special importance to the task of disseminating humanitarian rules, not only among the opposing parties but also among the civilian population, for the latter to be aware of its rights in the context of the armed conflict. Furthermore, […] the State must disseminate them [and] and they must be studied in educational institutions […] Specifically, [it is] indispensable for the members of the security forces to be familiar with humanitarian rules, not only because they are natural addressees of said regulations but also because the Constitution itself states that they must receive human rights education […]." [FN294]

[FN294] See judgment C-225/95 of May 18, 1995, issued by the Constitutional Court.

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i) Publication of the pertinent parts of the instant Judgment

318. The Court deems that, as a measure satisfaction, the State must publish once, within six months of notification of the instant Judgment, in the official gazette Diario Oficial and in another national daily, the section of this Judgment on Proven Facts, without the respective footnotes, paragraphs 101 and 123 of the section on International Responsibility of the State, as well as the operative section of this Judgment.

XV. COSTS AND EXPENSES

Pleadings of the Commission

319. The State must pay the duly proven costs and expenses, given the special characteristics of the case.

320. Pleadings of the representatives

a) during its work, from 1997 to January 2004, both domestically and internationally, in the case of the Mapiripán Massacre, the Corporación Colectivo de Abogados incurred expenses that added up to US$ 129,691.28; and
b) during the four years of litigation before the inter-American system, CEJIL has incurred numerous expenses in connection with the litigation, which "go far beyond the amount requested of the Court regarding costs of litigation." The expenses claimed by CEJIL with regard to litigation before the Inter-American System add up to US$ 51,905.78.

321. Pleadings of the State

a) in many cases there are no invoices for disbursement of the amounts given to the attorneys of the Colectivo de Abogados. Furthermore, the expenses for maintaining the offices of the Colectivo de Abogados should be proportional to all the activities they carry out, rather than include all expenses, during the period in which they were involved in the proceeding; and
b) costs stemming from the administrative-law proceedings will be established in the final decisions reached there. Furthermore, there are no costs to reimburse regarding criminal and disciplinary actions.

Considerations of the Court

322. As the Court has already pointed out before, [FN295], costs and expenses are included under the concept of reparations embodied in Article 63(1) of the American Convention, since activities by the next of kin of the victims or their representatives seeking to obtain justice, both domestically and internationally, entail disbursements that must be compensated when judgment finds the State internationally responsible. With regard to their reimbursement, the Court must judiciously assess their scope, including expenses incurred under domestic venue, as well as those generated by the proceeding before the inter-American system, taking into account certification of the expenses incurred, the circumstances of the specific case, and the nature of international jurisdiction for the protection of human rights. This assessment must be based on

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the principle of fairness and take into account the expenses listed and proven by the parties, insofar as their quantum is reasonable.

[FN295] See Case of Yatama, supra note 7, para. 264; Case of the Indigenous Community Yakye Axa, supra note 12, para. 231, and Case of the Moiwana Community, supra note 4, para. 222.

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323. The concept of costs, for the purposes of this examination, encompasses both those regarding access to justice at the national level, and those with regard to international justice before two bodies of the Inter-American System for the Protection of Human Rights: the Commission and the Court. [FN296]

[FN296] See Case of Yatama, supra note 7, para. 264; Case of the Indigenous Community Yakye Axa, supra note 12, para. 231, and Case of the Moiwana Community, supra note 4, para. 222.

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324. The Court takes into account that some of the next of kin of the victims who were executed and made to disappear during the facts in Mapiripán acted through representatives, both before the Commission and before the Court. In this case it has been established that, due to the very circumstances of this case, limited participation of the next of kin in the criminal proceedings, whether as civil parties or as witnesses, has been a consequence of the threats received during and after the massacre, of their situation of displacement and of the fear of participating in said proceedings. In point of fact, only a few next of kin have testified in the criminal proceedings and have initiated administrative-law proceedings. It has also been proven that only the spouse of one of the victims, Nory Giraldo, has appeared as a civil party in said criminal proceeding and, according to information by the representatives, has done so as an agent of the same non-governmental organization that represents her before this Court.

325. In view of the above, it is not possible to order compensation for costs and expenses, directly to the next of kin of the victims, for them to distribute it among those who provided legal counsel, as this Court has done in recent cases, [FN297] for which reason it deems it fair to order the State to reimburse US$ 20,000.00 (twenty thousand United States dollars) or its equivalent in Colombian currency, to the Colectivo de Abogados José Alvear Restrepo for costs and expenses incurred under domestic venue and in the international proceeding before the Inter-American System for the Protection of Human Rights, and that it reimburse US$ 5,000.00 (five thousand United States dollars) or its equivalent in Colombian currency to CEJIL for costs and expenses incurred in the international proceeding.

[FN297] See Case of Yatama, supra note 7, para. 265; Case of Carpio Nicolle et al., supra note 261, para. 145; Case of De la Cruz Flores, supra note 4, para. 178.

XVI. MODES OF COMPLIANCE

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326. To comply with the instant Judgment, Colombia must pay the compensation for pecuniary and non-pecuniary damages (supra paras. 274, 278, 288 and 290), reimburse the costs and expenses (supra para. 325) and build an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre (supra para. 315), within one year of its notification. The State must also publish the pertinent parts of this Judgment (supra para. 318), within six months of its notification. Colombia must immediately take the necessary steps to activate and effectively complete, within a reasonable time, the investigation to establish liability of the masterminds and direct perpetrators of the massacre and those whose acquiescence and collaboration made it possible, as well as the necessary steps to individually identify the victims who were executed or made to disappear and their next of kin (supra paras. 296, 297, 298 and 305 to 310). With regard to adequate treatment for the next of kin of the victims who were executed or made to disappear, it must be provided immediately for those who have been identified, and as soon as the State identifies those who have not yet been identified, and for as long as necessary (supra para. 312). With regard to the official mechanism that Colombia will establish to follow up on the instant case, it must be established within six months of the notification of this Judgment, and it will be in operation for two years (supra para. 311). Finally, the State must implement permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, within a reasonable time (supra para. 316).

327. Payment of compensation ordered in favor of the next of kin of the victims will be carried out in accordance with the provisions set forth in paragraphs 259, 274, 278, 288 and 290 of the instant Judgment.

328. Payments for reimbursement of costs and expenses will be done in accordance with the provisions of paragraph 325 of the instant Judgment.

329. The State must fulfill its pecuniary obligation by payment in United States dollars or their equivalent in the State's national currency, using the exchange rate between both currencies in the New York exchange in the United States, the day before the payment.

330. The amounts allocated in the instant Judgment as compensation for pecuniary and non-pecuniary damages and for reimbursement of costs and expenses, cannot be encumbered, diminished or subject to conditions due to current or future tax-related reasons. Therefore, they must be delivered completely to the beneficiaries, in accordance with the provisions of this Judgment.

331. With regard to compensations ordered in favor of the minors, the State must deposit them in a solvent Colombian institution. The investment will be made within one year, under the most favorable financial conditions allowed by banking practices and legislation, while the beneficiaries are minors. They can withdraw it when they become adults, or before that if a competent judicial authority rules that this is in the best interests of the child. If the compensation is not claimed within ten years of when they become adults, the amount will return to the State, together with the interest accrued.

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332. If it is not possible for the next of kin who are beneficiaries of the compensation to receive it within the aforementioned period, for reasons attributable to them, the State will deposit said amounts in their favor in a deposit certificate or account in a solvent Colombian banking institution, in United States dollars and under the most favorable financial conditions allowed by banking practices and legislation. If the compensation has not been collected after ten years, the amount deposited will be returned to the State together with the interest accrued.

333. If the State were to be in arrears, it must pay interest on the amount owed, at banking interest rates for arrearages in Colombia.

334. In accordance with its constant practice, the Court retains its inherent authority to oversee full compliance with the instant Judgment. The case will be closed once the State has fully complied with the provisions of the instant judgment. Within one year of notification of this Judgment, Colombia must submit its first report on steps taken to comply with this Judgment.

XVII. OPERATIVE PARAGRAPHS

335. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State violated the rights of a certain number of victims –whom the State referred to as approximately 49- to personal liberty, to humane treatment, and to life, embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in combination with Article 1(1) of said treaty, under the terms of paragraphs 101 to 138 of this Judgment, and the following victims have been individually identified: José Rolan Valencia, Sinaí Blanco Santamaría, Antonio María Barrera Calle, Álvaro Tovar Muñoz, Jaime Pinzón, Raúl Morales, Edwin Morales, Manuel Arévalo, Hugo Fernando Martínez Contreras, Diego Armando Martínez Contreras, Omar Patiño Vaca, Eliécer Martínez Vaca, Gustavo Caicedo Rodríguez, Enrique Pinzón López, Luis Eduardo Pinzón López, Jorge Pinzón López, José Alberto Pinzón López, Jaime Riaño Colorado, Uriel Garzón, and Ana Beiba Ramírez.
2. The State violated, to the detriment of the next of kin of the victims, the right to humane treatment, embodied in Article 5(1) and 5(2) of the Convention, in combination with Article 1(1) of said treaty, for the reasons stated in paragraphs 140 to 146 of this Judgment.
3. The State violated, to the detriment of Hugo Fernando and Diego Armando Martínez Contreras, Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, and the Valencia Sanmiguel siblings, that is, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber the rights of the child embodied in Article 19 of the American Convention on Human Rights, in combination with Articles 4(1), 5(1) and 1(1) of that same Convention, under the terms of paragraphs 159, 160 and 163 of this Judgment. The State also violated the rights of the child, embodied in said provision of the American Convention on Human Rights, in combination with

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Articles 4(1), 22(1) and 1(1) of that same Convention, under the terms of paragraphs 161, 162 and 163 of this Judgment, to the detriment of the children displaced from Mapiripán, the following of whom been individually identified in this Judgment: Carmen Johanna Jaramillo Giraldo, Gustavo Caicedo Contreras, Maryuri Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras and the Valencia Sanmiguel siblings, that is, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber.

4. The State violated, to the detriment of Mariela Contreras Cruz, Rusbel Asdrúbal Martínez Contreras, Maryuri and Gustavo Caicedo Contreras, Zuli Herrera Contreras, Nory Giraldo de Jaramillo, Carmen Johanna Jaramillo Giraldo, Marina Sanmiguel Duarte, Nadia Mariana, Yinda Adriana, Johanna Marina, Roland Andrés and Ronald Mayiber, all of them Valencia Sanmiguel, Teresa López de Pinzón and Luz Mery Pinzón López, the right of movement and residence embodied in Article 22(1) of the American Convention on Human Rights, in combination with Articles 4(1), 5(1), 19 and 1(1) of said treaty, under the terms of paragraphs 169 to 189 of this Judgment.

5. The State violated, to the detriment of the next of kin of the victims, the right to fair trial and the right to judicial protection embodied in Articles 8(1) and 25 of the Convention, in combination with Article 1(1) of that same Convention, under the terms of paragraphs 195 to 241 of this Judgment.

6. This Judgment constitutes in itself a form of reparation.

AND DECIDES,

unanimously, that:

7. The State must immediately take such steps as may be necessary to activate and effectively complete, within a reasonable term, the investigation to establish the liability of the masterminds and direct perpetrators of the massacre, as well as those whose collaboration and acquiescence allowed the massacre to be committed, in accordance with the terms of paragraphs 295 to 304 and 326 of this Judgment.

8. The State must immediately take such steps as may be necessary to individually identify, within a reasonable time, the victims who were executed and made to disappear, as well as their next of kin, in accordance with the terms of paragraphs 305 to 310, 311 and 326 of this Judgment.

9. The State must establish, within six months of notification of this Judgment, an official mechanism that will function for two years, with participation by the victims of the instant case or the representatives they appoint, to perform the functions set forth in paragraph 311 of this Judgment.

10. The State must provide the next of kin of the victims who were executed or made to disappear, with their prior consent, beginning once the instant Judgment has been notified for those who have already been identified, and once those who have not yet been identified are, and for as long as necessary, at no cost to them and through the national health services, adequate treatment, including medication, in accordance with the terms of paragraph 312 of this Judgment.

11. The State must carry out such actions as may be necessary to ensure security conditions for the next of kin of the victims, as well as other former inhabitants of Mapiripán, who have been displaced, to be able to return to Mapiripán, if they wish to do so, in accordance with the terms of paragraphs 311 and 313 of this Judgment.

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12. The State must build, within one year of notification of this Judgment, an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, in accordance with the terms of paragraphs 315 and 326 of this Judgment.
13. The State must implement, within a reasonable term, permanent education programs on human rights and international humanitarian law within the Colombian Armed Forces, at all levels of its hierarchy, in accordance with the terms of paragraphs 316 and 317 of this Judgment.
14. The State must publish once, within six months of notification of the instant Judgment, in the official gazette Diario Oficial and in another national-coverage daily, the Section of this Judgment on Proven Facts, without the respective footnotes, paragraphs 101 to 123 of the Section on International Responsibility of the State, as well as its operative part, in accordance with the terms of paragraph 318 of this Judgment.
15. The State must pay the amounts set forth in paragraphs 274 and 278 of the instant Judgment, in favor of the next of kin of the victims, for pecuniary damages, in accordance with the terms of its paragraphs 257, 259, 260, 311, 326, 327, 329 to 333.
16. The State must pay the amounts set forth in paragraphs 288 and 290 of the instant Judgment, in favor of the next of kin of the victims, for non-pecuniary damages, in accordance with the terms of its paragraphs 257, 259, 260, 289, 311, 326, 327, 329 to 333.
17. The State must pay the amounts set forth in paragraph 325 of the instant Judgment, for costs and expenses, in accordance with the terms of its paragraphs 326 and 328 to 333.
18. The Court will oversee comprehensive compliance with this Judgment and it will close the instant case once the State has fully complied with its provisions. Within one year of notification of this Judgment, the State must report to the Court on steps taken to comply with it, in accordance with the terms of its paragraph 334.

Judge Cançado Trindade and ad hoc Judge Zafra Roldán submitted their Separate Opinions to the Court, which are attached to the instant Judgment.

Drafted in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on September 15, 2005.

Sergio García Ramírez
President

Alirio Abreu Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Manuel E. Ventura Robles

Gustavo Zafra Roldán
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

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Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred in the adoption by the Inter-American Court of the instant Judgment in the case of the Mapiripán Massacre. Given the special gravity of the facts in the instant case, which reflect the true human tragedy suffered by Colombia in recent years, I feel the obligation to state my reflections on the matters discussed by the Court in the instant Judgment, as the basis for my position on the subject. For this I will address, in this Separate Opinion, five key points, which in my view are especially significant: a) the broad scope of the general duties of protection (Articles 1(1) and 2) of the American Convention revisited; b) finding of international responsibility of the respondent State (in the circumstances of the instant case); c) the broad scope of Article 1(1) of the American Convention and the erga omnes obligations of protection; d) international responsibility of the State and the aggravating circumstances revisited; and e) reassertion of the prevalence of Law over the use of force.

I. The Broad Scope of the General Duties of Protection (Articles 1(1) and 2) of the American Convention Revisited

2. I begin by firmly stating the view that I have invariably expressed in this Court, for years, regarding the broad scope of the general duties of protection set forth in Articles 1(1) and 2 of the American Convention. The general duty enshrined in Article 1(1) of the Convention – to respect and ensure the exercise, without any discrimination, of the rights that it protects- is not "accessory" to the provisions regarding the rights set forth in the Convention, individually considered, one by one. The American Convention is not breached only and insofar as there is an abridgment of a specific right protected therein, but also when one of the general duties set forth in the Convention /Articles 1(1) and 2) is not fulfilled.

3. Article 1(1) of the American Convention is much more than a mere "accessory", it is a general duty imposed on the States Party and it encompasses the whole set of rights protected under the Convention. Its continued violation can entail additional abridgments of the Convention, added on to the original abridgments. Article 1(1), thus, has a broad scope. It refers to a permanent duty of the States, non-fulfillment of which can generate new victims, causing per se additional violations, without the need for them to be related to the rights that were breached originally. I have been insisting, within this Court, on my hermeneutics of Article 1(1) – as well as that of Article 2 - of the Convention, which maximizes protection of human rights under the Convention, since my Dissenting Opinion in the Caballero Delgado y Santana versus Colombia case (reparations, Judgment of 29.01.1997).

4. The Court has fortunately endorsed it, beginning with the Suárez Rosero versus Ecuador case (Judgment of 12.11.1997), with immediate positive results, and in subsequent Judgments (those in the cases of Castillo Petruzzi et al. versus Peru, of 30.05.1999; of Baena Ricardo et al.

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versus Panama, of 02.02.2001; of Hilaire, Constantine and Benjamin et al. versus Trinidad and Tobago, of 21.06.2002; of the Five Pensioners versus Peru, of 28.02.2003), as I have just recalled in my recent Separate Opinion (paras. 15-21), seven days ago, in the case of the Girls Yean and Bosico versus the Dominican Republic (Judgment of 08.09.2005), in which the Court has acted in a similar manner in this regard.

5. To deny the broad scope of the duty of protection under Articles 1(1) and 2 of the Convention – or to minimize them by means of a dispersed and disintegrated interpretation of said duties- would amount to depriving the Convention of its effet utile. The Inter-American Court cannot shift away from its jurisprudence constante in this regard, and it has the duty to watch over the conservation of the high standards of protection built over the years through its jurisprudence. Its noteworthy construction of jurisprudence [FN1] on this matter cannot be curtailed, and I would firmly oppose any attempt to do so. Said construction expresses Law in evolution, which admits no regression. Furthermore, the gravity of the facts in the instant case of the Mapiripán Massacre, with regard to Colombia, very clearly shows the importance of maintaining the appropriate hermeneutics of Article 1(1) of the American Convention.

[FN1] Which I have recently attempted to summarize; see, e.g. , A.A. Cançado Trindade, "The Case-Law of the Inter-American Court of Human Rights: An Overview", in Studi di Diritto Internazionale in Onore di G. Arangio-Ruiz, vol. III, Napoli, Edit. Scientifica, 2004, pp. 1873-1898.

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6. Before referring to my reflections on the facts in the cas d'espèce, I merely wish to add here that, just as the existence of a law that is manifestly incompatible with the American Convention entails per se a violation of said Convention (under the general duty of its Article 2, to harmonize domestic legal provisions with the Convention), the lack of positive protection measures –and even preventive ones- by the State, in a situation that reveals a consistent pattern of violent and flagrant and grave human rights violations, entails per se a violation of the American Convention (under the general duty to guarantee rights, set forth in Article 1(1), that is, to respect and insure respect for the rights protected).

7. In this regard, the general duties of Articles 1(1) and 2 of the American Convention have an autonomous meaning of their own, and establishment of their non-fulfillment is not subject to establishing specific individual violations of one or another right enshrined in the American Convention. With regard to this matter, the most enlightened jurisprudence of this Court (see above) has in fact acknowledged the broad and autonomous meaning of the general duties set forth in Articles 1(1) and 2 of the American Convention, whose abridgment, rather than being subsumed in individual violations of specific rights under the convention, instead is addedl to said violations.

II. Finding the Respondent State Responsible in the Circumstances of the Instant Case.

8. In the instant Judgment in the case of the Mapiripán Massacre, the Court has noted that the respondent State acknowledged its international responsibility (on 07.03.2005) "for violation

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of Articles 4(1), 5(1) and (2), and 7(1) and (2) of the American Convention on Human Rights, in connection with the facts that took place in Mapiripán in July 1997" and it has granted said acknowledgment "full effect" (para. 125). Said facts consisted of acts committed by a group of paramilitary against the victims (para. 117), and the State, after acknowledging them, subsequently sought to object to said acts in the Mapiripán Massacre being attributed to the State itself. The Court noted that

"while the acts that took place between July 15 and 20,1997, in Mapiripán, were committed by members of paramilitary groups, the massacre could not have been prepared and carried out without the collaboration, acquiescence, and tolerance, expressed through several actions and omissions, of the Armed Forces of the State, including high officials of the latter" (para. 121).

9. Then, analyzing the facts acknowledged by the respondent State in the cas d'espèce, the Court stated that

"it clearly follows that both the behavior of its own agents and that of the members of the paramilitary groups are attributable to the State insofar as they in fact acted in a situation and in areas that were under the control of the State. In point of fact, the incursion by the paramilitary in Mapiripán was an act planned several months before July 1997, carried out with full knowledge, logistic preparations and collaboration by the Armed Forces, who enabled the paramilitary to leave Apartadó and Neclocí toward Mapiripán in areas that were under its control, and left the civilian population defenseless during the days of the massacre by the unjustified transfer of the troops to other places" (para. 121).

10. A State is found to be internationally responsible by means of a judicious mental operation by the members of a competent international judicial body, after carefully establishing the facts of the concrete case; it is not merely the mechanical application of given formulations of precepts that, in any case, are suppletory in nature. [FN2] Regarding the subject matter under examination, I wish to refer here to a reflection that guided the past work of the United Nations International Law Commission (ILC) on attributing a conduct to the State with the purpose of establishing its international responsibility.

[FN2] No matter how pertinent it may be to consider, with the aim of attributing said responsibility, the provisions set forth in Articles 8 and 9, and partly in Article 11, of the 2001 ILC Articles on the International Responsibility of the States –even more so in face of the acknowledgment of international responsibility made by the State regarding "the acts that took place in Mapiripán in July 1997."

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11. In his substantive fourth (1972) Report on "The Internationally Unlawful Act of the State, a Source of International Responsibility", the former rapporteur of the ILC on this subject, Roberto Ago [FN3], judiciously reflected that

"It would be useless to object, as writers have often done, that only States are subjects of international law and that therefore only they can violate the obligations imposed by that law.

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Apart from the fact that such an objection would be begging the question, the cases referred to here are not cases of so-called international responsibility of individuals, but cases of international responsibility of the State. Since the action of the private individual would be attributed to the State, the State, acting through the individual, would breach an international obligation" [FN4].

[FN3] In addition to Roberto Ago (rapporteur on this topic for the ILC from 1963 to 1979) we should mention other distinguished jurists who also acted as rapporteurs on this matter at the ILC, both the previous one, F.V. García Amador (1955-1961), and subsequent ones (W. Riphagen, 1979-1986), G. Arangio-Ruiz (1987-1996) and J. Crawford (1997-2001).
[FN4] U.N., Yearbook of the International Law Commission (1972)-II, p. 96, para. 63.

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12. And Roberto Ago, the author of Part I of the draft ILC Articles on “The Origin of the Responsibility of the State”, added, in his enlightened and erudite manner, that

"Indeed, it could be so attributed, but only in cases where it is specifically characterized by a measure of participation or complicity on the part of State organs. There is no need, at this juncture, to establish the forms that such 'participation' or `complicity' should take (...). The action of an individual would be the basis of the internationally wrongful conduct of the State, and the State would violate an international obligation through the action of an individual in which certain organs were merely accomplices. (...) The internationally wrongful act with which the State is charged is the violation of an international obligation perpetrated through the action of the individual concerned (...)" [FN5].

[FN5] Ibid., pp. 96-97, para. 64.

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13. Anyhow, in the instant case, the conduct constituted by the facts, acknowledged by the respondent State itself, was duly attributed to the latter by the Court. The conclusion reached by the Court regarding the facts of the instant case, which speaks in itself of the seriousness of the phenomenon of paramilitarism in Colombia, was stated by the Court in unequivocal terms:

"Collaboration by members of the armed forces with the paramilitary was shown by a set of grave actions and omissions aimed at enabling the massacre to take place and at covering up the facts to seek impunity for those responsible. In other words, the State authorities who were aware of the intentions of the paramilitary group to conduct a massacre to instill fear among the population not only collaborated in preparations for said group to be able to carry out these criminal actions but also made it appear to public opinion that the massacre was committed by the paramilitary group without their knowledge, participation, and tolerance, situations that are contrary to what has already been demonstrated in the proven facts.
Likewise, since it has partially acknowledged its international responsibility for violations of the American Convention, the State cannot validly exclude from the content of its declaration any of the points acknowledged. Thus, we cannot accept the claim by the State that it must not be found

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responsible for the acts committed by the paramilitary or self-defense groups in the Mapiripán Massacre, as this would render the previously made acknowledgment void of content, and would lead to a substantial contradiction with some of the facts that it has acknowledged.
In brief, having established that there was a link between the armed forces and this paramilitary group to commit the massacre, based on the acknowledgment of the facts by the State and the body of evidence in the file, the Court has reached the conclusion that the international responsibility of the State has resulted from a set of actions and omissions by State agents and private citizens, conducted in a coordinated, parallel or linked manner, with the aim of carrying out the massacre. (...) Since the acts committed by the paramilitary against the victims in the instant case cannot be considered mere acts amongst private individuals, as they are linked to actions and omissions by State officials, the State is found to be responsible for said acts, based on non-fulfillment of its erga omnes treaty obligations to ensure the effective exercise of human rights in said relations amongst individuals" (paras. 122-124).

14. There is no way to avoid finding the respondent State responsible for conduct in violation of human rights in the cas d'espèce, nor is it a matter of doing so. To attempt to do this, under the circumstances of the instant case, would involve a fruitless and in abstracto interpretive exercise, devoid of meaning and of juridical value. There is no way to avoid recognizing both the failings and omissions of the public State authorities regarding prevention and conclusive investigation of the violations committed in the instant case, and the support or collaboration provided, directly or indirectly, by public State authorities to the paramilitary, in committing grave violations of human rights under the American Convention. By finding the State internationally responsible for the above, the Court has faithfully applied the significant provisions of the American Convention on Human Rights, which constitute the applicable law in the specific case.

15. The facts are richer than the formulations of precepts, they predate the latter, and they must constantly be reformulated in light of the core principles of the law of nations, to attain the realization of justice. In conclusion, regarding the point under examination –that of attributing international responsibility to the respondent State (imputability)-, the instant case of the Mapiripán Massacre did not only involve acts by "mere private citizens" or only "tolerance" by the State. It has been proven that there was, also, an effective collaboration by the armed forces of the State with the paramilitary or "self-defense" groups, thus also involving State agents, and constituting a set of grave actions and omissions that have entailed violations of human rights in an especially cruel manner, definitively making the State internationally responsible.

16. In a country such as Colombia, with a noteworthy and respectable juridical tradition (including the sphere of International Law [FN6]), cradle of the inter-American system, it is not surprising that its own Constitutional Court –in addition do other domestic legal bodies- has espoused this same interpretation of the facts regarding the paramilitary that scourge the country, -as the Inter-American Court has appropriately recalled in the instant Judgment (paras. 118-119), which also referred to similar comments made by the United Nations High Commissioner for Human Rights [FN7] (para. 120). These facts are, therefore, publicly known and notorious, both domestically and internationally.

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[FN6] As exemplified by the successive writings, throughout the 20th century, of –for example- J.M. Yepes, F. Urrutia, J.J. Caicedo Castilla, D. Uribe Vargas, and A. Vázquez Carrizosa.
[FN7] Regarding the human rights situation in Colombia in the year 1997; U.N. doc. E/CN.4/1998, of 09.03.1998, paras. 29 and 91.

III. The Broad Scope of Article 1(1) of the American Convention and the Erga Omnes Obligations of Protection.

17. Article 1(1) of the American Convention, which establishes the general duty of the States Party to respect and ensure respect for the rights that it protects, has been clearly abridged in the instant case, and the conduct that violates it, constituted by a set of actions and omissions, has been attributed by the Court to the respondent State, taking into account the broad scope of that provision of the Convention. The general duty of protection set forth in Article 1(1) of the Convention also provides the basis for the development of the erga omnes partes system of obligations under the American Convention, including the juridical consequences of non-fulfillment of said obligations by the respondent States.

18. Within this Court I have been endeavoring, for years, to conceptually construct the erga omnes protection obligations under the American Convention. I do not intend to reiterate here my previous reflections on this matter, especially in my Separate Concurring Opinions in the Judgments on Provisional Protection Measures issued by the Court in the cases of the Peace Community of San José de Apartadó (of 18.06.2002 and 15.03.2005), of the Communities of the Jiguamiandó and the Curbaradó (of 06.03.2003 and 15.03.2005), of the Kankuamo Indigenous People (of 05.07.2004), of the Sarayaku Indigenous People (of 06.07.2004 and 17.06.2005), and of the Urso Branco Prison (of 07.07.2004), and of the Mendoza Penitentiaries (of 18.06.2005), but rather to highlight the key points of my reflections on this matter, with the aim of ensuring effective protection of human rights in a complex situation such as that of the instant case of the Mapiripán Massacre.

19. Actually, well before the latter cases were brought before this Court, I had already pointed out the urgent need to foster the development of doctrine and jurisprudence regarding the juridical system of erga omnes protection obligations regarding the rights of the human person (e.g. in my Separate Opinions in the Judgments on the merits, of 24.01.1998, para. 28, and on reparations, of 22.01.1999, para. 40, in the Blake versus Guatemala case). And in my Separate Opinion in the Las Palmeras case (Judgment on preliminary objections, of 04.02.2000), with regard to Colombia, I reflected that an appropriate understanding of the broad scope of the general obligation to guarantee the rights enshrined in the American Convention, set forth in its Article 1(1), can contribute to realization of the purpose of development of the erga omnes protection obligations (paras. 2 and 6-7).

20. Said general obligation to guarantee rights –I added in the aforementioned Opinion in the Las Palmeras case – binds each State Party individually and all of them jointly (erga omnes partes obligation- paras. 11-12). Thus,

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"there could hardly be better examples of mechanisms for application of the erga omnes obligations of protection (…) than the methods of supervision foreseen in the human rights treaties themselves, for the exercise of the collective guarantee of the protected rights. (…) the mechanisms for application of the erga omnes partes obligations of protection already exist, and what is urgently needed is to develop their legal regime, with special attention to the positive obligations and the juridical consequences of the violations of such obligations. " (para. 14).

21. In my Concurring Opinion in the case of the Peace Community of San José de Apartadó (Order of 18.06.2002), with regard to Colombia, I pointed out that the obligation of the State to provide protection applies not only to its relations with the persons under its jurisdiction, but also, in certain circumstances, to relations among private individuals; it is a true erga omnes obligation of protection by the State regarding all persons under its jurisdiction, an obligation that becomes more important in a situation of constant violence and insecurity such as that of the instant case of the Mapiripán Massacre, and that

"(...) it clearly requires recognition of the effects of the American Convention vis-à-vis third parties (the Drittwirkung), without which the treaty obligations to provide protection would become little more than dead letter.
Reasoning based on the thesis of the objective responsibility of the State is, in my opinion, unavoidable, especially in the case of provisional protection measures such as these. It is a matter, here, of avoiding irreparable damage to the members of a community (...), in a situation of extreme gravity and urgency, which involves actions (…) by bodies and agents of the public security forces" (paras. 14-15).

22. Subsequently, in another case that is both individual and collective in scope, in my Concurring Opinion in the case of the Communities of the Jiguamiandó and the Curbaradó (Order of 06.03.2003), also with regard to Colombia, I insisted on the need for "acknowledgement of the effects of the American Convention vis-à-vis third parties (the Drittwirkung)", - pertaining to the erga omnes obligations - " without which the conventional obligations of protection would be reduced to little more than dead letter" (paras. 2-3). And I added that, under the circumstances of that case –as well as those of the instant case-, clearly

"protection of human rights determined by the American Convention Americana, to be effective, comprises not only the relations between the individuals and public authorities, but also their relations with third parties (…). This reveals the new dimensions of the international protection of human rights, as well as the great potential of the existing mechanisms of protection, - such as that of the American Convention, - set in motion in order to collectively protect the members of a whole community, even though the basis of action is the breach - or the probability or imminence of breach - of individual rights" (para. 4).

23. In its historically significant Advisory Opinion No. 18, on the Juridical Status and Rights of Undocumented Migrant Workers (of 17.09.2003), the Inter-American Court rightly stated that the rights protected by the American Convention must be respected both in relations between individuals and public State authorities and in relations among individuals, and therefore the duty of the States Party (para. 140) to guarantee rights under Article 1(1) of the Convention is enforceable. The Convention's provisions regarding protection therefore have an effect with

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regard to third parties (private individuals), thus constitution the erga omnes nature of the obligations to protect (the Drittwirkung).

24. In this regard, the Inter-American Court has also highlighted, in the instant case of the Mapiripán Massacre, the broad scope of the duty to guarantee rights under Article 1(1) of the American Convention. Thus, in addition to noting that when the respondent State acknowledged its responsibility it "explicitly accepted that, despite being as yet indeterminate, at least 49 victims were executed" (para. 134), the Court reflected that

"It would be incoherent to limit the determination of the victims to what is established in the criminal and disciplinary proceedings in this case, in which the majority of the victims precisely have not been identified, due to the modus operandi of the massacre and the grave lack of compliance with the State's duty to provide protection and with its duty to conduct the investigations with due diligence" (para. 138).

25. Here, once again, the obligation of the State to ensure protection and due diligence shows the broad scope of the general duty of protection under Article 1(1). In this connection, regarding the broad scope of the erga omnes obligation of protection, in my Concurring Opinion in Advisory Opinion No. 18 of the Inter-American Court on The Juridical Status and Rights of Undocumented Migrants (of 17.09.2003), I noted that said erga omnes obligations, characterized by jus cogens (from which they derive) [FN8], being necessarily objective in nature, therefore encompass all the addressees of the legal provisions (omnes), both members of the bodies of the public State authorities and private individuals (para. 76). And I added:

"In my view, we can consider such erga omnes obligations from two dimensions, one horizontal and the other vertical, which complement each other. Thus, the erga omnes obligations of protection, in a horizontal dimension, are obligations pertaining to the protection of human beings that pertain to the international community as a whole [FN9]. In the framework of international treaty law, they bind all the States Parties to human rights treaties (obligations erga omnes partes), and, in the ambit of general international law, they bind all the States that constitute the organized international community, whether or not they are Parties to those treaties (obligations erga omnes lato sensu). In a vertical dimension, the erga omnes obligations of protection bind both the bodies and agents of (State) public power, and the individuals themselves (in inter-individual relations).
The advent and evolution of International Human Rights Law have decisively contributed to development of this vertical dimension. But it is surprising that, until now, these horizontal and vertical dimensions of the erga omnes obligations of protection have gone entirely unnoticed by contemporary legal doctrine. Nevertheless, I see them clearly take shape in the legal system of the American Convention on Human Rights itself. Thus, for example, as to the vertical dimension, the general obligation, set forth in Article 1(1) of the American Convention, to respect and to ensure respect for the free exercise of the rights protected by it, generates erga omnes effects, encompassing relations of the individual both with the public (State) authorities as well as with other individuals (particuliers). [FN10]" (paras. 77-78)

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[FN8] In this same Opinion, I noted that “By definition, all the norms of jus cogens necessarily generate obligations erga omnes. While jus cogens is a concept of material law, the erga omnes obligations refer to the structure of their performance on the part of all the entities and all the individuals bound by them. In turn, not all erga omnes obligations necessarily refer to norms of jus cogens.” (para. 80)
[FN9] IACtHR, Blake versus Guatemala case (Merits), Judgment of 24.01.1998, Separate Opinion of Judge A.A. Cançado Trindade, para. 26, and see paras. 27-30.
[FN10] See, in this regard, in general terms, the resolution adopted by the Institut de Droit International (I.D.I.) at the 1989 session in Santiago de Compostela (Article 1), in: I.D.I., 63 Annuaire de l'Institut de Droit International (1989)-II, pp. 286 and 288-289.
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26. Actually, contemporary legal doctrine, addressing erga omnes obligations, has focused almost exclusively on the horizontal dimension, without establishing a distinction with regard to the other, vertical dimension, and without addressing the latter at all. The facts in the instant case of the Mapiripán Massacre have shown the urgent need to pay greater attention to what I call the vertical dimension of the erga omnes obligations to provide protection.

27. I have been insisting on this point –shown once again in the cas d'espèce – within both the Inter-American Court and the Institut de Droit International. I have done so, in the latter, both in my written remarks [FN11] and in the debates. A few days ago, in its debates on this matter, at its last meeting in Cracow, I stated, in my oral remarks on August 25, 2005 at that Polish city, inter alia that

"(...) Precisely because obligations erga omnes incorporate fundamental values shared by the international community as a whole, compliance with them appears to me required not only of States, but also of other subjects of international law (including international organizations as well as peoples and individuals). Related to jus cogens, such obligations bind everyone.
After all, the beneficiaries of the compliance with, and due performance of, obligations erga omnes are all human beings (rather than States). I am thus concerned (...) that an essentially inter-State outlook (...) does not sufficiently reflect this important point. Moreover, the purely inter-State dimension of international law has long been surpassed, and seems insufficient, if not inadequate, to address obligations and rights erga omnes. To me, it is impossible here not to take into account the other subjects of international law, including the human person. (...)
Furthermore, the obligation to respect, and to ensure respect of, the protected rights, in all circumstances, - set forth in humanitarian and human rights treaties, - that is to say, the exercise of the collective guarantee, - is akin to the nature and substance of erga omnes obligations, and can effectively assist in the vindication of compliance with those obligations. Jus cogens, in generating obligations erga omnes, endows them with a necessarily objective character, encompassing all the addressees of the legal norms (omnes), - States, peoples and individuals. In sum, it seems to me that the rights and duties of all subjects of international law (including human beings, the ultimate beneficiaries of compliance with erga omnes obligations) should be taken into account in the determination of the legal regime of obligations erga omnes, and in particular of the juridical consequences of violations of such obligations.
Last but not least, I support the reference (...) to the qualification of "grave" breaches of erga omnes obligations, as they affect fundamental values shared by the international community as a

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whole and are owed to this latter, which, in my view, comprises all States as well as other subjects of international law. All of us who have accumulated experience in the resolution of human rights cases know for sure that rather often we have been faced with situations which have disclosed an unfortunate diversification of the sources of grave violations of the rights of the human person (such as systematic practices of torture, of forced disappearance of persons, of summary or extra-legal executions, of traffic of persons and contemporary forms of slave work, of gross violations of the fundamental principle of equality and non-discrimination) - on the part of State as well as of non-State agents (such as clandestine groups, unidentified agents, death squads, paramilitary, and the like). This has required a clear recognition of the effects of the conventional obligations of protection also vis-à-vis third parties (the Drittwirkung), including individuals (identified and unidentified ones).

I feel that we cannot adequately approach erga omnes obligations, - compliance with which benefits ultimately the human person, - from a strictly inter-State perspective or dimension, which would no longer reflect the complexity of the contemporary international legal order. Obligations erga omnes have a horizontal dimension, in the sense that they are owed to the international community as a whole, to all subjects of international law, but they also have also a vertical dimension, in the sense that they bind everyone, - both the organs and agents of the State, of public power, as well as the individuals themselves (including in inter-individual relations, where grave breaches also do occur)" [FN12].

[FN11] Cf. A.A. Cançado Trindade, "Reply [- Obligations and Rights Erga Omnes in International Law]", in 71 Annuaire de l'Institut de Droit International - Session de Cracovie (2005) n. 1, pp. 153-156 and 208-211.

[FN12] Oral remarks by A.A. Cançado Trindade at the Cracow meeting (August 2005), as yet unpublished (to be published in the upcoming volume of the Annuaire of said Institut).

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28. In accordance with its most enlightened jurisprudence and with a hermeneutics that integrates (rather than segregates) the provisions of the American Convention, the Inter-American Court, in the instant Judgment, has inter se related the violations of the American Convention, of the rights to life, to humane treatment, and to personal liberty (Articles 4, 5 and 7), in addition to the rights of the child (Article 19) and freedom of movement (Article 22(1), in view of forced displacement, infra), added to the violation of the general duty of protection set forth in Article 1(1) of the Convention (paras. 137, 145, 162, 184 and 189). The Court has explicitly recognized that said violations are all linked to each other, and that they cannot be separated from each other (para. 186).

29. In brief, reflecting the major doctrinal contribution of its memorable Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (2003), the Court has highlighted the “unbreakable link” between the erga omnes obligations of protection and the jus cogens nature of the basic principle of equality and non-discrimination, which imposes upon the States the special duty of taking such steps as may be necessary to ensure protection of human rights with regard to “acts and practices of third parties who, under its tolerance or acquiescence, create, maintain, or foster discriminatory situations” (para. 178). With this, the Court has ensured that the silence of innocent victims will not go unremembered and unnoticed.

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IV. The International Responsibility of the State and the Aggravating Circumstances Revisited.

30. In our days, massacres in the current brutalized world are beginning to be heard not only by ad hoc international criminal courts (such as those for the former Yugoslavia and for Rwanda), to establish the international criminal responsibility of individuals, but also by international human rights courts (such as this Inter-American Court), to establish the international responsibility of States. This new development is exemplified, at this Court, by the recent cases of the Plan de Sánchez Massacre with regard to Guatemala (2004), of the 18 Merchants versus Colombia (2004), and of the Moiwana Community versus Suriname (2005), in addition to the previous cases of Aloeboetoe et al. versus Suriname (1991-1993) and of Barrios Altos with regard to Peru (2001), and, finally, the instant case of the Mapiripán Massacre with regard to Colombia.

31. It is my understanding that this new development cannot and must not be ignored or minimized by contemporary international juridical doctrine. The latter, or at least most of it, regrettably continues to follow an anachronistic and extremely outdated State-centered approach to the general issue of international responsibility. If it continues along these lines, without directly linking international responsibility of the States to international criminal responsibility of individuals, it runs the risk of becoming even more anachronistic, in addition to being inevitably non-significant.

32. International Human Rights Law and International Criminal Law must take each other into account, reciprocally and jointly, as the former focuses on the international responsibility of the State, and the latter on the international criminal responsibility of the individual, and both must be addressed in a concomitant manner, as the atrocities are not merely acts (or omissions) committed by isolated individuals on their own. In actual practice, atrocities have received support from the acquiescence, tolerance, or collaboration by the public authority of the State, in whose name said perpetrators often act.

33. There are cases of omissions both by the public authorities of the State and by broad sectors of the population itself (frequently terrorized). All this constitutes the existence of aggravating circumstances, in the midst of a protracted pattern of grave, flagrant and constant violations of human rights. These are, then, aggravated human rights violations.

34. The grave acts in the instant case of the Mapiripán Massacre speak for themselves, as can be seen in the chapter (No. VIII) of this Judgment on the facts proven before the Inter-American Court. They are set within the framework of the phenomenon of the so-called “paramilitarism” that arose in Colombia especially after 1985, when the State fostered the establishment of “self-defense groups,”, commonly called paramilitary (“constituted by death squads, groups of hired murderers, self-defense or private justice groups”), “severely damaging the country’s social stability.” [FN13]

[FN13] Para. 96(2), (3) and (6).

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35. In this convulsed context, as this Court noted in the instant Judgment,

"The incursion of the paramilitary in Mapiripán was an act that had been meticulously planned several months before June 1997, carried out with logistic preparatory work and with the collaboration, acquiescence, and omissions by members of the Army. (...) The authorities knew of the attack against the civilian population in Mapiripán and they did not take the necessary steps to protect the members of the community" (para. 96(43)).

The Court deemed it proven that "the Colombian army allowed 'irregular flights' that transported" the paramilitary to the area to land, and they "facilitated transportation of the paramilitary to Mapiripán" [FN14]. When they surrounded Mapiripán at dawn on July 15, 1997, the paramilitary "were wearing uniforms that were used exclusively by the military forces, they had short and long range weapons the use of which was restricted to the State, and they used high frequency radios. " [FN15] And the Court added, in its account:

"The paramilitary remained in Mapiripán from July 15 to 21, 1997, during which time they impeded free movement of the inhabitants of said municipality, and they tortured, dismembered, eviscerated and decapitated approximately 49 individuals and threw their remains into the Guaviare river (...); furthermore, once the operation was completed, the AUC destroyed a major part of the physical evidence with the aim of obstructing the gathering of evidence" (para. 96(39)).

[FN14] Para. 96(30), (31) and (32).
[FN15] Para. 96(34).
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36. The "terror sown amongst the surviving inhabitants of Mapiripán" caused their forced displacement. [FN16] Estimates are that today, due to the country's social upheaval, there are – according to various sources- between 1.5 million and 3 million displaced persons in Colombia. [FN17] The forced displacement crisis, in turn, has led to a human security crisis,

"because the groups of internally displaced persons become a new focus or resource for recruitment by the paramilitary groups themselves, by drug traffickers, and by the guerrilla forces" (para. 96(59)).

The Court added that, despite the initiatives of State bodies to attenuate the problems of displaced persons, and the "important progress" attained, their rights have not been comprehensively protected, especially given the "precarious institutional capacity to implement State policies and the insufficient allocation of resources." [FN18]

[FN16] Para. 96(47).
[FN17] Para. 96(57).

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[FN18] Para. 96(62); see also para. 181. And, regarding the vulnerability of the next of kin of the victims of the Mapiripán massacre and the persistent "partial impunity" since the acts of terror that took place between July 15 and 20, 1997, see para. 96(174).
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37. In the instant Judgment in the case of the Mapiripán Massacre, the Inter-American Court has established that there were a number of aggravating circumstances, such as the fact that the victims were arbitrarily deprived of their liberty and subjected to torture or cruel, inhuman or degrading treatment, before they were executed (para. 135); the fear to which they were subjected, followed by forced displacement of the survivors (paras. 141-142, 160 and 175); abridgment of their right to humane treatment and violation of their family life, as the survivors were not even able to honor their dead, and the fact that most of the victims are still missing (para. 143); the presence of boys and girls among the displaced persons as well as among those executed (two of them) and the eyewitnesses of the massacre (paras. 150-151 and 154); the "grave deterioration" of the vulnerability of the living conditions of the displaced persons (para. 181), most of whom have not returned to their homes (para. 160); the cover-up of the facts and partial persistence of the impunity of those responsible for the violations that were committed (para. 234).

38. The Court has assessed said aggravating circumstances, and it has found that the violations of human rights in the case of the Mapiripán Massacre

"are aggravated as a consequence of non-fulfillment of the duty to provide protection and of the duty to investigate the facts, as a consequence of the lack of effective judicial mechanisms to this end and to punish all those responsible for the Mapiripán Massacre" (para. 241).

39. In my view, examination, in recent years, of cases of massacres, heard both by international criminal courts and by international human rights courts, must, in our days, involve greater rapprochement or convergence between international criminal responsibility of individuals and international responsibility of the States, respectively, which in my opinion are essentially complementary –as I have pointed out in my Separate Opinion (paras. 14-20) in the Myrna Mack Chang versus Guatemala case (Judgment of 25.11.2003), as well as in my Separate Opinion (paras. 37-39) in the case of the Plan de Sánchez Massacre with regard to Guatemala (merits, Judgment of 29.04.2004), and as I have been arguing consistently since this type of especially grave cases has been systematically brought before this Court.

40. The aggravating circumstances as regards the international responsibility of the State lead us precisely to the concept of a "Crime of State", recently eluded by the ILC. However, as I mentioned in my aforementioned Separate Opinion in the Myrna Mack Chang versus Guatemala case (2003), when a State plans, and contributes to the execution of, or executes a crime, it follows that Crimes of State do exist. The State, with its juridical personality, is imputable, like any other legal person. Thus, as I pointed out in that Separate Opinion, and I firmly reiterate that position here,

"most contemporary international juridical doctrine is mistaken in seeking to avoid the issue. While the expression "crime of State" may seem objectionable to many international jurists

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(especially those petrified by the specter of State sovereignty) because it suggests an inadequate analogy with juridical categories of domestic criminal law, this does not mean that crimes of State do not exist. The facts in the instant case are eloquent evidence that they do exist. Even if another name is sought for them, [FN19] the existence of crimes of State does not cease for that reason.

(…) As long as attempts to evade the issue continue, contemporary international juridical doctrine will continue to succumb to the specter of State sovereignty, and it will continue to hold back the evolution of the law of nations in our days. As long as its existence continues to be denied, the human person, the ultimate one entitled to its inherent rights, and prior and superior to the State, will be denied protection and exercise of said rights, first of all the right to justice; the human person will also be denied reparations for abridgments of those rights.

As long as its existence continues to be denied, the State –hostage to a deformed structure of repression and impunity- will be deprived of its principal aim, the realization of the common weal. As long as its existence continues to be denied, in the midst of an empty semantic imbroglio (which distracts attention from the central issue, which is the need to ensure that justice prevails), the Law itself will be deprived of its ultimate aim, which is precisely the realization of justice. As long as attempts to avoid the issue continue, treatment of the central chapter of the law of international responsibility of the State will continue to be unconvincing, in addition to being conceptually incomplete and juridically inconsistent" (paras. 53-55). [FN20]

[FN19] Which would not avoid the skeptical exclamation of the legendary prince of Denmark:

"- (...) What do you read, my lord?

- Words, words, words".

(W. Shakespeare, Hamlet, Prince of Denmark, 1600, act II, scene 2).

[FN20] Also see, in this regard, A.A. Cançado Trindade, "Complementarity between State Responsibility and Individual Responsibility for Grave Violations of Human Rights: The Crime of State Revisited", in International Responsibility Today - Essays in Memory of O. Schachter (ed. M. Ragazzi), Leiden, M. Nijhoff, 2005, pp. 253-269.

V. Epilogue: Reassertion of the Primacy of the Law over Force

41. I cannot conclude this Separate Opinion without a brief epilogue, with the aim of insisting on the significance of the general principles of Law in the application of the American Convention on Human Rights, and on the necessary and unavoidable primacy of Law over force. As regards the first point, I wish to reiterate my understanding, stated in my Separate Opinion in the case of the Plan de Sánchez Massacre (merits, 2004), with regard to Guatemala, that the principle of humanity permeates all the corpus juris of International Human Rights Law and International Humanitarian Law, both in treaties and unwritten; it is, therefore,

"necessary to take into account, at the same time, next to international treaty law, also general international law" (para. 9) [FN21].

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[FN21] Also see, in this regard, A.A. Cançado Trindade, "La Convention Américaine relative aux Droits de l'Homme et le droit international général", in Droit international, droits de l'homme et juridictions internationales (eds. G. Cohen-Jonathan y J.-F. Flauss), Bruxelles, Bruylant, 2004, pp. 59-71.

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42. And I added, in that same Separate Opinion, that

"In its jurisprudence constante, the Inter-American Court, interpreting and applying the American Convention, has consistently invoked the general principles of law. [FN22] Among the latter, those that are truly fundamental in nature constitute the substratum of the juridical order itself, revealing the right to the Law to which all human beings are entitled. [FN23] In the domain of International Human Rights Law, this category of fundamental principles includes the principle of the dignity of the human person and that of the inalienable nature of the rights that are inherent to that person. In its Advisory Opinion No. 18, on the Juridical Status and Rights of Undocumented Migrants, (2003), the Inter-American Court explicitly referred to both principles. [FN24]
Prevalence of the principle of respect for the dignity of the human person becomes identified with the very purpose of the Law, of the legal order, both domestic and international. (...)" (paras. 16-17).

[FN22] See Inter-American Court of Human Rights (I-A Ct of HR), Case of the “Five Pensioners” versus Peru (Judgment of 28.02.2003), para. 156; I-A Ct of HR, Cantos versus Argentina case (Prel. Obj., Judgment of 07.09.2001), para. 37; I-A Ct of HR, Case of Baena Ricardo et al. versus Panama (Judgment of 02.02.2001), para. 98; I-A Ct of HR, Case of Neira Alegría versus Peru (Prel. Obj., Judgment of 11.12.1991), para. 29; I-A Ct of HR, Case of Velásquez Rodríguez versus Honduras (Judgment of 29.07.1988), para. 184; and also see I-A Ct of HR, Advisory Opinion No. 17, on the Juridical Status and Human Rights of the Child (of 28.08.2002), paras. 66 and 87; I-A Ct of HR, Advisory Opinion No. 16, on the Right to Information on Consular Assistance in the Framework of Guarantees of Due Legal Process (of 01.10.1999), paras. 58, 113 and 128; I-A Ct of HR, Advisory Opinion No. 14, on International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (of 09.12.1994), para. 35.
[FN23] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume III, Porto Alegre/Brasil, S.A. Fabris Ed., 2003, pp. 524-525.
[FN24] Paragraph 157 of said Advisory Opinion.

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43. In the instant case of the Mapiripán Massacre, the Inter-American Court, as it has done before, has taken general international Law into account and, as it could not be otherwise, also the general principles of Law, in the process of applying the American Convention. Also, as it has likewise done other times, it has recognized the convergence between the provisions of the Convention, as the applicable law in the cas d'espèce, and International Humanitarian Law (para. 153 [cf.]). Said convergence also encompasses International Refugee Law. The Guiding Principles on Internal Displacement adopted in 1998 by the United Nations Commission on

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Human Rights do in fact explicitly recognize said convergence between International Human Rights Law, International Humanitarian Law, and International Refugee Law. [FN25]

[FN25] See U.N./Commission on Human Rights, document E/CN.4/1998/53/Add.2, of 11.02.1998, pp. 1-12, esp. pp. 2-5.

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44. In the course of 2004, the preparatory process as a whole (meetings in San Jose, Costa Rica, Brasilia, and Cartagena de Indias), organized by UNHCR, in fact led to adoption of the Declaration and Plan of Action of Mexico to Strengthen International Protection of Refugees in Latin America, in November 2004, in commemoration of the 20th anniversary of the Cartagena Declaration on Refugees. One of the key points in this Declaration addressed the problem of the victims of the current internal displacement in Colombia, in the midst of a genuine spirit of Latin American solidarity. This was, precisely, an occasion to assert the convergence (at the normative, hermeneutic, and operational levels) between International Human Rights Law, International Refugee Law, and International Humanitarian Law. [FN26]

[FN26] See A.A. Cançado Trindade, "Aproximaciones y Convergencias Revisitadas: Diez Años de Interacción entre el Derecho Internacional de los Derechos Humanos, el Derecho Internacional de los Refugiados, y el Derecho Internacional Humanitario (De Cartagena/1984 a San José/1994 y México/2004", in Memoria del Vigésimo Aniversario de la Declaración de Cartagena sobre los Refugiados (1984-2004), México/San Jose, Costa Rica, UNHCR, 2005, pp. 139-191.

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45. The instant case of the Mapiripán Massacre reveals the sad destiny of the victims, including –beyond those established in the instant Judgment- those who are forgotten in view of the indifference of the brutalized world of our times. On the other hand, there is a sepulchral silence of the innocent (whether in Colombia, Iraq, the United States, Afghanistan, Spain or the United Kingdom, among so many other countries) who are the victims of the various expressions of terror (all of which set aside the basic principles of humanity, of distinction, of proportionality, which are principles of International Humanitarian Law).

46. One does not combat terror with terror, but rather within the framework of the Law. Those who resort to the use of brute force brutalize themselves, creating a spiral of widespread violence that ends up turning the innocent, including children, into victims. May the case of the Mapiripán Massacre be a warning for the irresponsible harbingers of the so-called “war on terror” who set aside the Law and the United Nations Charter.

47. Brute force generates brute force, and at the end, what do we have? Nothing, general devastation, the breakdown of the social fabric, vengeance, torture, and summary executions and other grave violations of International Humanitarian Law [FN27] and International Human Rights Law, the transformation of human beings into mere instruments of confrontation and destruction –opening wounds that will require generations to heal.

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[FN27] Cf. J. Cardona Lloréns, "Libération ou occupation? Les droits et devoirs de l'État vainqueur", in L'intervention en Irak et le Droit international (eds. K. Bannelier, O. Corten, Th. Christakis and P. Klein), Paris, Pédone/CEDIN, 2004, pp. 221-250; G. Abi-Saab, "Les Protocoles Additionnels, 25 ans après", in Les nouvelles frontières du Droit international humanitaire (ed. J.-F. Flauss), Bruxelles, Bruylant, 2003, pp. 33-36; Y. Sandoz, "L'applicabilité du Droit international humanitaire aux actions terroristes", in ibid., pp. 71-72.

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48. As I noted in my Separate Opinion in the case of the Plan de Sánchez Massacre (reparations, Judgment of 19.11.2004), "the ancient Greek were already aware of the devastating effects of the use of brute force and of war, both on the victors and on the vanquished, revealing the great evil of substituting ends with means" (para. 29); since the times of Homers Iliad to the present day, all those in favor of brute force have become cogs in the killing machine. As in Homers Iliad, "there are neither victors nor vanquished, they are all taken over by force, possessed by war, degraded by the devastation of brutality and massacres" (para. 30), perpetuating themselves, multiplying their innocent victims.

49. Long after Homer, in the 3d century of our age, Plotinus (204-270), in his Enneads, argued that the fate of human beings cannot be left to chance, to fortune, because human beings are gifted with reason, which must prevail [FN28] under all circumstances, at it is not just any type of reason, but a noble one, above the natural state, and which guides everyone. [FN29] In our somber times, we must remember Plotinus' enduring lesson, that of one who sought the "liberation" or "emancipation" of the soul so much. [FN30]

[FN28] Plotinus, The Enneads, London, Penguin, 1991 [repr.], p. 522.
[FN29] Ibid., p. 33.
[FN30] Cf. ibid., pp. 51 and 115.

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50. I fear, however, as I stated in my aforementioned Separate Opinion in the case of the Plan de Sánchez Massacre (reparations, 2004), that the brutality and the massacres of previous decades and the dark times that we are experiencing in this year 2005, in various parts of the world, have an uncivilizing effect, and that the dangerous spiral of violence in the early 20th century suggests that

"human beings seemed to have learned little or nothing from the suffering of generations past, which can only be contained by faithfully adhering to the Law and to its basic principles. The Law is above force, just as conscience is above will [FN31] (conscience being the ultimate source of all Law). The instant Judgment of the Inter-American Court speaks eloquently of the necessary primacy of Law over brute force" (para. 30).

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[FN31] A.A. Cançado Trindade, "El Primado del Derecho sobre la Fuerza como Imperativo del Jus Cogens", in Doctrina Latinamericana del Derecho Internacional, vol. II (eds. A.A. Cançado Trindade and F. Vidal Ramírez), San Jose, Costa Rica, Inter-American Court of Human Rights, 2003, pp. 62-63.

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51. We cannot combat terror with its own weapons. J. Picted pertinently warned us of this, in an almost premonitory tone, in the first edition of his Principles of International Humanitarian Law, almost four decades ago. In his own words,

"it would be a disastrously retrograde step for humanity to try to fight terrorism with its own weapons" [FN32].

The harbingers and apologists of brute force today do not realize the deeply uncivilizing effect of their attitude, its harmful or ominous effects on humanity.

[FN32] J. Pictet, The Principles of International Humanitarian Law, 1st. ed., Geneva, ICRC, 1966, p. 36.

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52. The fact that cases of massacres are currently being heard not only by international criminal courts, but also by international human rights courts, to establish the respective responsibilities, suggests, on the other hand, an awakening of human awareness, of universal juridical awareness, to the need to seek solutions within the framework of the Law. May the message and the bitter lessons of the instant case of the Mapiripán Massacre, and its tragic consequences, echo elsewhere, and especially north of the equator, in the minds of those who exercise power.

53. And may international jurists (most of whom are still afflicted by the old State-centered approach) awaken from their mental lethargy, characteristic of their extremely outdated dogmatism. And, ultimately, may they serve as a warning against noxious and spurious pseudo-“doctrines” that today seek to favor the undue use of brute force, setting aside the Law. We must assert, as often as necessary, the primacy of Law over force. Terror is not combated with terror. I trust that Colombia, with its respectable and valuable juridical tradition, will find, within the Law, the means to overcome the vast human tragedy in which it lives, or in which it has survived for so long, and to move beyond it, giving the international community one more testimony of its faith in the Law, as it has in times past.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary

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SEPARATE CONCURRING OPINION OF AD-HOC JUDGE GUSTAVO ZAFRA ROLDAN

I fully concur with the Judgment of the Inter-American Court in the “Mapiripán Massacre” case.

I add the following remarks:

1) In the cases in which the State of Colombia and the victims have reached a settlement under Administrative Law venue, these settlements, based on the principle of good faith, must be taken into account.

a) If the settlement has been partial or total, determination of the amount to be paid for reparations ordered by the Inter-American Court must deduct what the State effectively recognized and paid in the administrative law proceedings.
b) I am aware that the criteria used by the Inter-American Court to establish comprehensive redress are not exactly the same as those followed by the State Council [Consejo de Estado]. However, reparations must respect the principle of good faith, as well as the criterion of the Inter-American Court -which coincides with that of the State Council- that reparations must not constitute unjustified enrichment.

2) On the other hand, the strictly humanitarian aid provided by the State of Colombia, consisting of groceries, household utensils, transportation, and subsidies, cannot be considered compensation for the unlawful damage caused by the State to the victims.

a) The State’s obligation to provide humanitarian aid derives from the principles of solidarity, International Humanitarian Law, and the duties of the social State based on the rule of law.
b) On the other hand, the obligation to provide reparation for the damage caused by violation of the Rights to Life and to Humane Treatment, and other rights that were abridged, derives from non-compliance by the State with its role as guarantor, which constitutes the unlawful damage.
c) If the former and the latter are confused, we would find ourselves in the extreme situation of the State making demands on the victims for not exercising its own role as guarantor.
d) These humanitarian aids, all the more so, must not be confused with the obligation to provide reparation for the internationally unlawful act of the State, for which this Court has found it to be responsible, and which is the basis for the awards made in fairness in favor of the victims.

3) With regard to the figure of forty-nine violations of the Right to Life which has been accepted by the parties, and given the impossibility of submitting new evidence other than the last identification of twenty three made by the Office of the Government Attorney [Fiscalía General de la Nación], clearly this poses a very complex problem to solve for execution of the Judgment.

a) Efforts by the Office of the Government Attorney, the Forensic Medicine Institute [Instituto de Medicina Legal], and the use of genetic identification techniques, will be decisive to

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attain a fair execution of the judgment, with regard to the unidentified victims of the crimes of forced disappearances.
b) The State has the right for the Judgment to be executed in accordance with regard for Due Process as required by the American Convention, and to which the intervening parties are entitled.

4) The parties, at a public hearing, have accepted the possibility of a mechanism for execution of the Judgment that is akin to the establishment of a trust. If I insist on this mechanism, it is with the aim that the internal proceedings of the State, derived from its organizational laws on planning and the budget, its annual budgetary laws and the decrees on budgetary performance, as well as the PAC, as they are called, do not become an obstacle to compliance with the judgment. The State cannot invoke its domestic legislation to justify non-compliance with the judgment.

5) The Municipality of Mapiripán will never be the same. The Municipality, the collectivity with legal capacity defined by the Colombian Constitution as "the basic territorial entity", in this case lost the identity it had before the massacre.

a) Since it is obviously difficul for the victims who survived to return, the State is under the obligation to provide these persons the opportunity to rebuild their family life, work-related life, and personal life.
b) Whether we call the above life aspirations, or recovery of personal identity, or free development of personality, is an important conceptual debate. However, in practical terms regarding compliance with the judgment, the State must seriously undertake the legal obligation to provide training and medical and psychological care for these persons, in Mapiripán or in whatever municipality they establish their place of residence.
c) In similar traumatic experiences, it has been established that individuals have the ability to recover by resisting grief and developing the capacity to overcome it, through resilience processes.

6) The State, by applying the principle of harmonious collaboration, can ensure that the authorities maintain prevalence of civilian authority over security forces and guarantee the Democratic and Constitutional Rule of Law in accordance with the terms set forth in the Charter of the Organization of American States.

7) Better collaboration among the bodies of the Judiciary enables the State to respond more adequately and in a timely manner to crimes against humanity such as the Mapiripán massacre.

8) The Colombian State must heed what the Inter-American Court has pointed out regarding case law on the Ipso-Jure invalidity of domestic legislation that breaches the international commitments of the States signatory to the American Convention on Human Rights.

GUSTAVO ZAFRA ROLDAN
Ad-hoc Judge

PABLO SAAVEDRA ALESSANDRI

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Secretary