Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Rochela Massacre v. Colombia
Doc. Type:	Judgement (Merits, Reparations, and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Cecilia Medina Quiroga; Judges: Manuel E. Ventura Robles; Diego Garcia-Sayan; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu Blondet
Dated:	11 May 2007
Citation:	Rochela Massacre v. Colombia, Judgement (IACtHR, 11 May 2007)
Represented by:	APPLICANTS: the "Jose Alvear Restrepo" Legal Cooperative and the CEJIL

In the case of the Rochela Massacre,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 29, 31, 53(2), 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I. INTRODUCTION TO THE CASE AND SUBJECT OF THE DISPUTE

1. On March 10, 2006, 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") submitted an application to the Court against the State of Colombia (hereinafter "the State" or "Colombia"). This application originated in petition No. 11,995, which was submitted to the Secretariat of the Commission on October 8, 1997 by the "José Alvear Restrepo" Legal Cooperative [Colectivo de Abogados "José Alvear Restrepo"] [FN1]. On October 9, 2002, the Commission adopted Admissibility Report No. 42/02, and on March 7, 2005, pursuant to Article 50 of the Convention, it adopted its Report on the Merits No. 29/05, [FN2] which made certain recommendations to the State. On September 28, 2005, the State organized a "public act acknowledging responsibility" with the participation of the Vice President of the Republic and the Minister of Foreign Affairs (infra para. 10). On February 28, 2006, the Commission concluded that "not all [of its] recommendations ha[d] been complied with" and, consequently, submitted this case to the jurisdiction of the Court. [FN3]

[FN1] On January 19, 2001, the Center for Justice and International Law (hereinafter "CEJIL") became a co-petitioner.

[FN2] In its report on merits, the Commission concluded that the State was responsible for: the violation of the right to life established in Article 4 of the American Convention to the detriment of Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga (or Vega) Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Luis Orlando Hernández Muñoz, Arnulfo Mejía Duarte and Samuel Vargas Páez; the violation of the right to personal integrity embodied in Article 5 of the American Convention to the detriment of the following survivors: Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, as well as of the abovementioned deceased victims and their next of kin. The Commission also found that the State was responsible for the violation of the right to judicial protection established in Articles 8 and 25 of the American Convention to the detriment of the victims and their next of kin. All of the foregoing rights were found to have been violated in relation to the State's non-compliance with the obligation to guarantee rights enshrined in Article 1(1) of the Convention.
[FN3] The Commission appointed Víctor Abramovich, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Ariel E. Dulitzky, Verónica Gómez, Víctor Madrigal Borloz and Manuela Cuvi Rodríguez as legal advisers.

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2. The application alleges that "on January 18, 1989, a paramilitary group, operating with the cooperation and acquiescence of State agents, extra judicially executed Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte and Samuel Vargas Páez, and violated the personal integrity of Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas […] while they were carrying out an investigation in their capacity as officials of the administration of justice in the district of 'The Rochela,' in Bajo Simacota, Department of Santander, Colombia." The Commission alleged that "the case remains characterized by partial impunity and most of the civilian and military masterminds and perpetrators have not been criminally investigated and punished." In addition, it stated that "the judicial determination of the facts with regard to the 'The Rochela' Massacre has special significance for Colombian society, because it concerns the murder of judicial officials while they were carrying out their duty to investigate the responsibility of civilians and army personnel in the massacre of the 19 Tradesmen and other violent acts," perpetrated in the Magdalena Medio region.

3. The Commission asked the Court to declare the State responsible for the violation of the right enshrined in Article 4 (Right to Life) of the American Convention in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the twelve alleged victims who died. The Commission also asked the Court to declare the State responsible for the violation of Article 5 (Right to Personal Integrity) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the three alleged victims who survived, as well as to the detriment of the next of kin of the alleged victims who died. In addition, the Commission asked the Court to declare the State responsible for the violation of Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention in relation to Article 1(1) thereof, to the detriment of the alleged

victims and their next of kin. As a result of the foregoing, the Commission asked the Court to order the State to provide certain measures of reparation.

4. The representatives of the alleged victims and their next of kin, the "José Alvear Restrepo" Legal Cooperative and the CEJIL (hereinafter "the representatives"), submitted their brief containing pleadings, motions, and evidence (hereinafter "brief containing pleadings and motions"), in accordance with Article 23 of the Rules of Procedure. Based on the facts described by the Commission in its application, the representatives asked the Court to declare that the State had violated the articles alleged by the Commission, and additionally, alleged that the following rights had been violated: the right to personal liberty (in relation to the alleged prolonged detention of the victims that preceded the massacre); the right to the truth (for which they invoked the rights alleged by the Commission and added Article 13(1) (Freedom of Thought and Expression) of the Convention); and non-compliance with Article 2 of the American Convention in relation to Articles 8 and 25 of the Convention (due to several characteristics of the normative framework established for paramilitary demobilization in Colombia (infra para. 185)). In addition, they argued that the State had violated Article 4 (Right to Life) of the American Convention, in relation to the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the three alleged victims who survived. Finally, they requested certain measures of reparation and the reimbursement of the costs and expenses incurred in processing the case at the domestic and international levels.

5. The State submitted its brief in response to the application and its observations with regard to the brief containing pleadings and motions (hereinafter "State's reply brief"), in which it partially acknowledged the facts, and partially acquiesced to some of the violations alleged by the Commission and the representatives. The scope and content of the State's acknowledgement and acquiescence will be determined in the corresponding section (infra para. 8 to 54). Furthermore, the State asked that the Court declare that it "has complied with the obligation to make integral reparation." The State also "reaffirmed its interest in reaching a friendly settlement" with regard to reparations.

II. JURISDICTION

6. The Court has jurisdiction over this case, pursuant to Articles 62 and 63(1) of the Convention, given that Colombia has been a State Party to the American Convention since July 31, 1973, and recognized the compulsory jurisdiction of the Court on June 21, 1985.

III. PROCEEDINGS BEFORE THE COURT

7. The application was served upon the State [FN4] and the representatives on May 5, 2006. During the proceedings before this Tribunal, in addition to the principal briefs submitted by the parties (supra para. 1 to 5), the President of the Court [FN5] (hereinafter "the President") ordered the admission of the testimony, given before a notary public (affidavit), of some of the next of kin of the alleged victims as well as the expert reports of several experts proposed by the Commission, the representatives and the State. The parties were given the opportunity to submit their respective observations with regard to this testimony. In addition, given the particular circumstances of the case, the President convened the Inter-American Commission, the

representatives and the State to a public hearing in order to hear the testimony of one of the alleged victims, three of the next of kin of the alleged victims, and the expert reports of three expert witnesses, as well as the final arguments of the parties on the merits, reparations, and costs. The public hearing was held on January 31 and February 1, 2007, during the seventy-fourth regular session of the Court. [FN6] At the hearing, the Court asked the parties to present certain evidence in order to aid the resolution of the case. In addition, following the instructions of the President and based on Article 45(2) of the Rules of Procedure, the Secretariat requested that the parties submit additional information and documentation in order to facilitate adjudication of the case. Finally, in March 2007, the Commission, the representatives and the State submitted their final written arguments on merits, reparations, and costs, in which they commented upon the State's acknowledgement of responsibility, the alleged violations of the Convention, and the reparations and costs.

[FN4] When the application was served upon the State, the State was informed of its right to designate an ad hoc judge to participate in the hearing of the case. On May 9, 2006, the State designated Juan Carlos Esguerra Portocarrero as ad hoc judge. On November 28, 2006, ad hoc Judge Juan Carlos Esguerra Portocarrero submitted a communication to the Court in which he "recused himself before [the President of the Tribunal] as ad hoc Judge in the case of the "Massacre of La Rochela" and gave his reasons for his recusal. In a letter of December 1, 2006, Mr. Esguerra Portocarrero and the parties were informed that the abovementioned communication had been submitted to the President of the Court who, in consultation with the other Judges of the Tribunal, decided to accept the recusal of the ad hoc Judge, taking into account Articles 19 of Rules of Procedure and Statute of the Court, and in light of the reasons expressed by Mr. Esguerra Portocarrero for his recusal.

[FN5] Order of the President of the Inter-American Court on December 22, 2006.

[FN6] The following were present at this hearing: (a) for the Inter-American Commission: Víctor Abramovich, Commissioner, and Santiago A. Canton, Executive Secretary, Delegates; Verónica Gómez, Lilly Ching and Juan Pablo Albán, advisers; (b) for the representatives: Eduardo Carreño Wilches, Rafael Barrios Mendivil and Jomary Ortegón Osorio, lawyers from the "José Alvear Restrepo" Legal Cooperative; and Viviana Krsticevic, Ariela Peralta, Francisco Quintana and Michael Camillieri, CEJIL lawyers; and (c) for the State: Eduardo Montealegre Lynett, Agent; Luz Marina Gil García, deputy Agent; Luis Guillermo Fernández, Ambassador of Colombia to Costa Rica; Clara Inés Vargas Silva, Director of Human Rights and International Humanitarian Law for the Ministry of Foreign Affairs [Directora de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores]; Hernán Guillermo Aldana Duque, Paula Lizano Van Der Latt, Diana Patricia Avila and Francisco Amaya Villareal, Advisors to the Human Rights and International Humanitarian Law Directorate for the Ministry of Foreign Affairs [Asesores de la Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores]; Dionisio Araujo, Director of the National Legal Defense Office for the Ministry of the Interior and Justice [Director de Defensa Judicial de la Nación, Ministerio del Interior y de Justicia]; Jaime Castillo Farfán, Advisor to the Ministry of the Interior and Justice [Asesor del Ministerio del Interior y de Justicia]; Sonia Uribe, Coordinator at the Contentious Law Group for the Ministry of Defense [Coordinadora del Grupo Contencioso, Ministerio de Defensa Nacional]; María Fernanda Cabral Molina, Director of International Affairs for the Office of the Attorney General [Directora de Asuntos

Internacionales, Fiscalía General de la Nación]; Laura Benedetti, International Affairs, Office of the Attorney General [Asuntos Internacionales de la Fiscalía General de la Nación]; Diana Bravo Rubio, Adviser to the Presidential Program for Human Rights and International Humanitarian Law [Asesora del Programa Presidencial para los Derechos Humanos y Derecho Internacional Humanitario]; Gustavo Paredes, Colombian Embassy in Costa Rica; Angela María Yepes, Adviser to the Legal Office of the President of the Republic of Colombia [Asesora de la Oficina Jurídica de la Presidencia de la República de Colombia]; Camilo Ospina Bernal, Ambassador, Permanent Representative of Colombia to the OAS, and Margarita Rey, Second Secretary for External Relations at the Permanent Mission of Colombia to the OAS [Segundo Secretario de Relaciones Exteriores en la Misión Permanente de Colombia ante la OEA].

IV. PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

8. In the present case, the State partially acknowledged its international responsibility in the proceedings before the Commission. This acknowledgment has full legal effects. [FN7] Likewise, the State more broadly acknowledged its international responsibility before this Tribunal. This broader acknowledgment will be analyzed with regard to its terms and scope. Moreover, the parties presented a "partial agreement in relation to some reparation measures" (infra para. 20 to 22 and 227).

[FN7] Cf. Case of Montero Aranguren et al. (Detention Center of Catia). Judgment of July 5, 2006. Series C No. 150, para. 49; Case of Acevedo Jaramillo et al. Judgment of February 7 2006. Series C No. 144, para. 176 to 180; and Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 58.

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9. In the terms of Articles 53(2) and 55 of the Rules of Procedure, and in the use of its inherent powers of international judicial protection of human rights, the Court is empowered to determine if an acknowledgment of international responsibility made by a respondent State constitutes sufficient grounds, in the terms of the American Convention, to conclude the proceedings, or if it is necessary, to continue with the examination of the merits and the determination of the reparations and costs. For these effects, the Tribunal analyzes the situation presented in each specific case. [FN8]

[FN8] Cf. Case of La Cantuta. Judgment of November 29, 2006. Series C No. 162, para 49; Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 132; Case of Vargas Areco. Judgment of September 26, 2006. Series C No. 155, para. 43.

A) Scope of the partial acknowledgment of international responsibility made by the State

1) Regarding the facts

10. On September 28, 2005, during the proceedings before the Commission, the State undertook a public act of acknowledgment of responsibility, in the framework of compliance with the recommendations adopted in the Report on the Merits No. 29/05 (supra para. 1). In this act, the Vice-President of the Republic of Colombia stated, inter alia, the following:

[O]n behalf of the Colombian State and as Vice-President of the Republic I acknowledge the State's international responsibility for not having adopted the measures necessary to guarantee the security of our officials; this omission permitted the violation of their rights to life and personal integrity. [FN9]

[FN9] Cf. State's reply brief, (record of the merits, reparations, and costs, volume I, page 862); and Commission's Application, Appendix 3, page 1809.

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11. In the State's reply brief, the State declared that "it will not debate the facts described in the petition that have a direct relationship with the occurrence of the massacre (para. 47 to 68 [of the Commission's application]) but it differs with regard to the assessment of the context in which the events occurred." In stating the purpose of its reply brief, the State indicated that:

it acknowledges the events which occurred on January 18, 1989 with regard to Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Media Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla, and Manuel Libardo Díaz Navas.
[…]
Even though the State acknowledges its responsibility, both for the State's omission in its duty to guarantee and for the isolated action of some of its agents (acquiescence and collaboration), the facts acknowledged by the State are only those specifically related to the case of the massacre of "The Rochela", that is, those which occurred in the month of January 1989.

12. Similarly, in its reply brief, the State "acknowledges as valid the representatives' statement regarding some specific facts related to the massacre, which it deems need no correction (pages 28 to 31) [of the brief containing pleadings and motions]." However, "with regard to the citations and the document transcripts," the State expressed that "the probative value of the inquiries, statements, and other procedural pieces must be analyzed systematically and with due precaution" and that "not everything included in them is necessarily true since they only include isolated pieces of the investigations." Regarding this matter, in its closing arguments, the State "emphasize[d] the need to comprehensively assess the content of the documents and probative elements present in the record which were taken into account by the Commission and the representatives for their claims".

2) Regarding the legal claims

13. In relation to the legal claims of both the Commission and the representatives (supra para. 3 and 4), Colombia stated that it acknowledges:

b. [I]ts international responsibility, through action and omission, for the violation of the rights enshrined in Articles 4 (right to life), 5 (right to personal integrity), and 7 (right to personal liberty), in relation to the general obligation established in Article 1(1) of the American Convention, with regard to the [deceased victims and the surviving victims].
c. [I]ts international responsibility for the violation of the right to personal integrity protected in Article 5 of the Convention, with regard to the victims' next of kin.
d. [I]ts partial international responsibility, for the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in connection to Article 1(1) (Obligation to Respect the Rights) of the American Convention, to the detriment of the victims and their next of kin in the case of The Rochela, since it considers that there are still judicial processes pending that are designed to punish the material and intellectual authors.

14. On this last point, in the State's reply brief, the State indicated that:

Partial impunity has existed with regard to the investigation and prosecution of all those responsible for the massacre. In this sense, [the State] admits that it failed in its duty to investigate and punish all of the perpetrators involved in the deplorable events.

15. In relation to the other legal claims, the State considered that:

it has complied with its treaty obligation established in Article 2 of the Convention and for that reason it has adopted "[…]the legislative measures or measures of another nature necessary to make these rights and liberties effective, in accordance with its constitutional procedures and the stipulations of this Convention." With regard to the measures implemented, the State specifically noted Law 975 of 2005, and the recent ruling of the Constitutional Court C-370 of 2006.
[…]
regarding the right to the truth, the Court has been consistent in pointing out that this right is subsumed in Articles 8 and 25 of the Convention. In other words, it cannot be invoked as an autonomous right within the American Convention, as erroneously proposed by the representatives in their brief.

3) Regarding the identity and number of victims

16. As stated in the previous section on the legal claims, Colombia clearly acknowledged the violation of Articles 4, 5, and 7 of the Convention, in relation to Article 1(1) of said treaty, to the detriment of the 12 members of the Judicial Commission [Comisión Judicial] that passed away and the 3 survivors. The State also expressed that it acknowledges its international responsibility for the violation of Article 5 of the Convention "with regard to the victims' next of kin." Likewise, Colombia "partially" acknowledged its responsibility with regard to the violation of Articles 8 and 25 of the Convention "to the detriment of the victims and their next of kin."

4) Regarding the requests for reparations and costs

17. In its reply brief, the State asked the Court to declare, inter alia, that:

[I]t has been advancing on the criminal and disciplinary investigations in order to punish all those responsible and clarify the truth of what happened with regard to the massacre of "The Rochela", without prejudice to its duty to continue and conclude these investigations.
[I]t has complied with the duty to provide comprehensive redress, and has specifically complied with the obligations of a pecuniary nature, with regard to the victims and/or their next of kin that turned to the domestic judicial procedures […].

18. In addition to the foregoing, in the section of its reply brief containing its petition, the State also requested, inter alia, that the Court:

Declare that the Colombian State has complied with each of the recommendations made by the Inter-American Commission in its report, number 29 of 2005.
[…]
Exclude from the list of injured parties the surviving victims and next of kin who received compensation in the domestic legal system for the pecuniary and non-pecuniary damages they may have suffered as a consequence of the events of "The Rochela".
Declare that Wilson Mantilla Castillo and Manuel Libardo Díaz expressly waived international reparation for pecuniary and non-pecuniary damages that they could have suffered as a consequence of the facts of "The Rochela", by virtue of the conciliation agreement signed with them and their next of kin.

19. Moreover, in the section of Colombia's reply brief corresponding to Reparations, under the title "Injured party", Colombia requested that the Court "deny the claims" submitted by the victims' next of kin who "went directly to the Inter-American Court […] without having brought forward any type of claim in the domestic forum, despite the opportunity to do so". Likewise, the State requested that "the surviving victims and their next of kin who […] received compensation under domestic law for the pecuniary and non-pecuniary damages caused [be excluded] from the list of injured parties" and indicated that these individuals were "compensated in the contentious administrative courts and in the settlement proceedings." [FN10]

[FN10] Cf. The State included a list of "individuals compensated by judgments in the contentious administrative courts", which identified 45 next of kin of the 11 deceased victims and surviving victim Arturo Salgado Garzón, and indicated that "no action for direct reparation was brought for the death of Arnulfo Mejia Duarte." Likewise, the State included a list of "individuals currently in extra-judicial settlement negotiations before the contentious administrative courts" in which 15 next of kin and the two surviving victims were included.

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20. After the presentation of the State's reply brief, the representatives submitted a "partial agreement in relation to some measures of reparation between the State of Colombia and the representatives of the victims and their next of kin" to the Court. This agreement was signed on January 31, 2007 and includes reparation measures related to: i) honoring the memory of the victims, ii) the publication of the Judgment of the Inter-American Court, iii) the damage to the

life project of the victims and their next of kin, and iv) the "damages sustained by some of the next of kin of the victims."

21. In one section of this partial agreement, the parties stated that the "reparation issues in dispute" are the following:

Those categories of reparation requested by the representatives of the victims in their brief containing pleadings and motions, regarding which there are no specific references in this partial agreement, will be considered as matters in controversy before the Honorable Inter-American Court. These include the following measures: 1) the obligation to investigate, prosecute, and punish; 2) the juridical framework applicable to the process of the paramilitary demobilization; 3) damage to the life project of the victims and their next of kin; 4) mechanisms to fight and dismantle the paramilitary phenomenon; 5) training courses for officials which include monitoring and evaluation; 6) the establishment of a National Human Rights Day; 7) a strategy for the protection of administrators of justice who participate in the investigation and prosecution of grave abuses of human rights; 8) economic compensation for the non-pecuniary and pecuniary damages of the people that were not included in this agreement, and 9) costs and expenses.

22. In their closing arguments briefs, both the State and the representatives asked that the Court certify this "Partial agreement with regard to some measures of reparation." Likewise, in their closing arguments brief, the representatives stated that:

[W]e find that what has been established in the partial agreement is totally compatible with the American Convention and with the jurisprudence of this Court, and that in some aspects it could establish new important precedents. Therefore, […] we withdraw the following categories of reparation requested in our autonomous brief, since we consider that they are covered by the partial agreement: 1) reparations that honor the victims' memory; 2) reparations regarding the damage to the life project of the victims and their next of kin, but exclusively in relation to points 1 (studies) and 3 (employment); and 3) regarding the publication of the Court's Judgment. We also withdraw our demands for economic compensation, exclusively in relation to the non-pecuniary damage caused to the twenty brothers and sisters of the victims mentioned in point IV of the partial agreement on reparations.

5) Arguments of the Inter-American Commission and the representatives regarding the partial acknowledgment of responsibility

23. In relation to the State's partial acknowledgment of responsibility before the Commission, the Commission stated in its application that, "the facts relating to the State's omissions with regard to guaranteeing the right to life and personal integrity of the victims of the present case are not in controversy before the Tribunal."

24. With regard to the subsequent acknowledgment made by the State before the Court, the Inter-American Commission expressed that "the partial acknowledgment of the facts and international responsibility made by the Colombian State in the present case, as well as the declaration of its desire to provide reparations for the victims, constitutes a positive contribution to the development of these proceedings." In relation to the acknowledgment of the facts, the

Commission stated that "certain aspects of the application remain in dispute [such as…] the context in which the alleged violations occurred. These violations have been partially acknowledged by the State." The Commission stated that it "considers it relevant to point out that the Massacre of The Rochela occurred within the context described in the application and that the massacre was possible because of this context." Moreover, the Commission indicated that, "[t]he Massacre of The Rochela did not occur within a vacuum: the events of January 18, 1989 occurred as a consequence of a series of actions and omissions that took place days before the events and within a specific social and normative context."

25. Likewise, the Commission stated that, "the controversy between the Commission and the State subsists with regard to Colombia's responsibility for the violations of Article 8 in relation to the actions committed by paramilitary groups." The Commission indicated that, "the facts related to the State's actions and omissions which have been acknowledged by the State, are not in dispute before this Tribunal." The Commission stated that, "[w]ithout prejudice to the foregoing, and taking into account the importance of the establishment of the truth of the totality of the events within this Court's competence with regard to the Massacre of 'The Rochela', […] the Commission finds that, as acknowledged by the State itself in its reply brief, the claims and demands related to the scope of the State's responsibility for the acts and omissions of its agents persist as indicated in the application." In its closing arguments the Commission added that the dispute persists with regard to the provision of adequate redress by the State.

26. On this issue, the representatives stated that "the State's partial acknowledgment of international responsibility is an important gesture, which is a positive contribution to the resolution of this case." However, they mentioned some matters still in dispute. With regard to the facts, they indicated that, by limiting its acknowledgment to the circumstances of the massacre in 1989 and rejecting the claims about the context of the massacre, the State "also implicitly rejected a part of the jurisprudence of [the Inter-American] Court." They alleged that "[t]his limitation has important consequences with regard to the Court's findings with regard to the violation of Articles 8 and 25, as well as […] reparations […]." Moreover, the representatives noted that the State only acknowledged "a partial" violation of Articles 8 and 25 of the Convention, and that it denies the violation of Article 2. Finally, they indicated that "the legality and scope of the reparation measures and guarantees of non-repetition" are still in dispute.

27. During the public hearing, the representatives stated that there are "four contentious matters" in which the dispute underlying the present case may be summarized:

[First,] the facts not acknowledged by the State regarding the context of the rise of the paramilitary phenomenon in the Magdalena Medio region and the training, coordination, and acts of concealment that occurred before and after that date. [Second,] the State has partially denied its responsibility regarding the violation of the right to effective judicial protection even though it has incurred grave violations of Articles 8 and 25 of the American Convention. [Third], the State vehemently defends the legal framework of the paramilitary demobilization process and the means of implementing this process. Therefore it rejects all criticism of the normative framework upon which it is founded. [F]ourth, the compensation measures for medical and psychological treatment, measures to guarantee non-repetition, as well as some additional reparation measures not included in the partial agreement.

28. In their final arguments the representatives argued that the acknowledgment of responsibility is "insufficient in relation to the violation of Articles 4, 5, and 7 since the State seeks to limit the events of the massacre to 'those that occurred in the month of January 1989´."

B) Extent of the remaining controversy

29. The Court finds that the partial acknowledgment of responsibility made by the State constitutes a positive contribution to the development of these proceedings. This acknowledgment also contributes to the proper functioning of the Inter-American human rights system in general, to the strength of the principles that inspire the American Convention, and to the conduct of the States in this sphere. [FN11] After having examined the State's acknowledgment and having taken into consideration the observations of the Commission and the representatives, the Court considers that controversy subsists in the terms expressed in the following paragraphs.

[FN11] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 148; Case of Vargas Areco, supra note 8, para. 65; and Case of Goiburú et al. Judgment of September 22, 2006. Series C No. 153, para. 52.

Regarding the facts

30. The Court observes that the State acknowledged "the events which occurred [to the victims] on January 18, 1989." Likewise, the State "acknowledges as valid some specific facts related to the massacre, which were presented by the representatives […] for which no reparation corresponds." In these terms, and understanding that the application constitutes the factual framework of the proceedings, [FN12] the Tribunal finds that the controversy has ceased with regard to the facts included in the application that refer to the events of January 18, 1989 which occurred to Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla, and Manuel Libardo Díaz Navas.

[FN12] Cf. Case of the Mapiripán Massacre. Judgment of September 15, 2005. Series C No. 134, para. 59; Case of La Cantuta, supra note 8, para 51; Case of Goiburú et al., supra note 11, para 48; and Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 55.

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31. The parties agree that the controversy subsists in relation to the context in which the massacre occurred (supra para. 11, 24 and 26). The State expressly rejects both the arguments

and the evidence related to this context, regarding which both the Commission and the representatives attribute responsibility to the State for the paramilitary phenomenon in the area.

32. The Court considers the facts of this case in their context in order to properly understand them and to determine the State's responsibility for them. Nevertheless, in doing so, it is not issuing its Judgment on the overall paramilitary phenomenon or ruling upon the variety of situations within this context.

Regarding the rights alleged to have been violated

33. Regarding the legal claims brought, the Court finds that the controversy has ceased with regard to the State's international responsibility for the violation of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Personal Integrity), and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) of the same, to the detriment of the deceased and surviving victims, as well as the State's international responsibility for the violation of Article 5 (Right to Personal Integrity) of the Convention to the detriment of the victims' next of kin.

34. With regard to the alleged violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention the State declared that it "partially" acknowledges its responsibility and rejected some of the allegations and charges made by the Commission and the representatives. In light of the facts of the present case, the Court considers it necessary to precisely determine the facts and juridical consequences of the alleged violation of these provisions of the Convention.

35. The Court observes that the State rejects the arguments contained in the Commission's application in which it attributed responsibility to the State with regard to the abovementioned dispute over the context in which the massacre occurred. In its reply brief, the State expressed that:

The Colombian State would like to emphasize that these proceedings are not designed to examine the paramilitary phenomenon in its global dimension, or to assess the promulgation of Decree 3398 of 1965 or Law 48 of 1968. No. What is currently being analyzed is the possible responsibility for the acts or omissions of some State agents in the massacre of "The Rochela".

36. Similarly, the State rejected the arguments put forward by the Commission and the representatives in which they requested that the Court establish that the paramilitaries acted "as state agents" in the present case.

37. In the preceding paragraphs, the Tribunal stated that although the State partially acknowledged its responsibility in relation to the violation of Articles 8 and 25 of the Convention, several matters remain in dispute regarding the characteristics of the alleged impunity that surrounds this case. In effect, in its reply to the application the State indicated that there are still judicial proceedings pending that seek to punish the material and intellectual authors of the massacre. The matters in dispute are related to, inter alia, the alleged relationship between the criminal investigation of this case and the death of three witnesses and an agent of the Technical Corps of the Judicial Police [Cuerpo Técnico de la Policía Judicial], the

intervention of the military's criminal justice system, and the alleged violation of the independence and autonomy of the judicial branch, among other alleged irregularities in the domestic proceedings.

38. Likewise, the State considers that it has complied with its obligation under Article 2 of the American Convention, whose non-compliance was alleged by the representatives. The State argued that the right to truth is not an autonomous right, as alleged by the representatives, but instead is subsumed in Articles 8 and 25 of the American Convention. As has been noted (supra para. 4), the representatives allege that the right to truth is also contained in Articles 2 and 13 of the Convention.

39. Pursuant to the terms expressed by the parties, the Tribunal finds that controversy subsists between them regarding the facts related to an alleged violation of Articles 2 (Domestic Legal Effects), and 13 (Freedom of Thought and Expression), as well as Articles 8(1) (Right to a Fair Trial), and 25(1) (Right to Judicial Protection) of the Convention, in relation to Article 1(1) of the Convention, to the detriment of all of the alleged victims and their next of kin.

Regarding the victims

40. Given the foregoing, the controversy has ceased with regard to the acknowledgment that the 12 members of the Judicial Commission who died and the 3 members who survived are victims of the violation of Articles 4, 5, and 7 of the Convention, in relation to Article 1(1) of the Convention, and that they are also victims of a partial violation of Articles 8 and 25 of the Convention.

41. Regarding the mentioned acknowledgment of the violation of Article 5 "with regard to the victims' next of kin" (supra para. 13) it must be noted that when the State expressed its acknowledgment, it knew that the Commission had presented a list of 86 people as next of kin [FN13] of victims in its application. Likewise, the State knew that, in their brief containing pleadings and motions, the representatives included 15 [FN14] individuals in their list of next of kin, in addition to the 86 individuals included in the application. Therefore, a total of 101 individuals were characterized as next of kin by the Commission and the representatives in their briefs.

[FN13] These are the spouses or companions, and children, parents, and siblings of the 12 deceased victims.

[FN14] The representatives included the names of: a son of the deceased victim Arnulfo Mejía Duarte; a grandchild of the deceased victim Samuel Vargas Páez; and the spouse, children, mother, and siblings of the surviving victim Arturo Salgado Garzón. Likewise, with regard to Arturo Salgado Garzón, the representatives included the names of three individuals who they identified as siblings (infra para. 48).

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42. Even though, according to Article 33(1) of the Court's Rules of Procedure, the Commission should precisely identify with precision the alleged victims in the case, at times the

Court has considered individuals who were not alleged as victims in the application, taking in account, inter alia, the procedural moment at which they were identified, the fact that the State had been guaranteed a possibility to object to their inclusion, and the State's acknowledgement of responsibility. [FN15]

[FN15] Cf. Case of La Cantuta, supra note 8, para. 72; Case of the Miguel Castro Castro Prison, supra note 8, para. 178; Case of Goiburú et al., supra note 5, para. 29; and Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 91.

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43. In addition, the Court bears in mind that, pursuant to Article 38(2) of the Court's Rules of Procedure, in its reply brief, the defendant State should have declared "whether it accepts the facts and claims or whether it contradicts them," and "the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested."

44. In this regard, the Court notes that, although the representatives included next of kin who were not indicated as victims in the application in their brief containing pleadings and motions, when the State acknowledged its responsibility, it had seen the list of individuals alleged by the representatives to be victims by virtue of their status as next of kin. The Court finds that, by not contesting the qualification of these next of kin as victims, the State accepted their inclusion as victims.

45. Likewise, the Court notes that, in its acknowledgment of responsibility, the State did not contest the relationships among these next of kin, nor did it contest the affectionate relationship these individuals had with the victims. The State's observations with regard to the next of kin were limited to rejecting the reparations claims of those who did not "present any type of claim in the domestic forum, despite having had the opportunity to do so," as well as those who had received some type of compensation in the domestic forum (supra para. 17). Given the foregoing, and given that the State acknowledged its responsibility in this case, the Court does not consider it necessary to analyze the evidence on this matter, since, based on the positions of the parties, it assumes that the next of kin listed by the Commission in its application, and by the representatives in their brief containing pleadings and motions (supra para. 41), do in fact have the kinship and affectionate relationships alleged.

46. Similarly, the Court finds that the State's arguments regarding the next of kin who have not presented a claim within the domestic forum (supra para. 17) are related to the preliminary objection for the failure to exhaust domestic remedies. This objection was analyzed by the Commission in its report on admissibility. In that report, the Commission found that the State tacitly waived this objection, and that as a result it was prevented –by virtue of the principle of estoppel– from raising this objection before this Tribunal. [FN16] Moreover, in its reply brief, Colombia indicated that "taking into account that […the State] acknowledges its responsibility for the events, this position implies a waiver of the right to present preliminary objections, according to the jurisprudence of the Inter-American Court."

[FN16] Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.). Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, para. 65; and Case of Acevedo Jaramillo et al., supra note 7, para. 176.
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47. At the corresponding time (infra para. 230 to 233), the Court will analyze the State's arguments with regard to reparations, specifically Colombia's request that the Court "exclude from the list of injured parties the surviving victims and next of kin who received compensation in the domestic legal system for the pecuniary and non-pecuniary damages caused."

48. Based on the preceding, this Tribunal grants full effect to the State's acknowledgment of responsibility for the violation of Article 5 of the Convention and to the "partial" acknowledgment for the violation of Articles 8 and 25 of the Convention "regarding the next of kin of the victims" alleged by the Commission in its application and by the representatives in their brief containing pleadings and motions (supra para. 41). However, the Court will not take into account the three individuals who were named in the representatives' list with the erroneous indication that they were the brothers of surviving victim Arturo Salgado Garzón. The Tribunal has determined that they were not brothers, but rather, cousins [FN17]. The representatives did not include any justification for their inclusion as victims. As a result, the Court finds that only twelve of the fifteen individuals (supra para. 41) added by the representatives in their list will be considered as victims by this Tribunal. Thus, the Tribunal will consider as victims a total of 98 individuals characterized as next of kin by the Commission and the representatives in their briefs.

[FN17] These individuals are Yulieth Salgado Ramírez, Milton Freddy Salgado Ramírez, and Diana Constanza Salgado Ramírez.
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49. The Tribunal notes that in the brief containing pleadings and motions the representatives did not include the name of the father of the victim Mariela Morales Caro in the list of next of kin considered as victims. However, they did mention him in their arguments with regard to the violation of Article 5 of the Convention, in the sense that they indicated that "the father of Mariela Morales Caro" died "in the period immediately following the massacre." In their written closing arguments, they stated that the father of this victim is Mr. Gilberto Morales Téllez, "who died three months after the death of his daughter due to a heart attack."

50. The Court finds that, although his name was not indicated until later, because he was mentioned by the representatives in their brief containing pleadings and motions, Mr. Gilberto Morales Téllez must be considered within the next of kin acknowledged as victims by Colombia.

Regarding the Reparations

51. The Court observes that, on the subject of reparations, the State rejects the requests made by the Commission and the representatives, and requested that the Court declare that it had fulfilled its "duty to provide comprehensive redress, […], specifically with regard to its

obligations of a pecuniary nature." Moreover, in its reply brief, the State requests, inter alia, that the Inter-American Court apply the jurisprudential standards of the Court corresponding to the years 1995 and 1996, which was the period in which the contentious administrative courts acknowledged compensations for some survivors and the next of kin of the victims.

52. In addition, the parties dispute the general scope and application to the specific case of both the laws for the demobilization of paramilitary groups as well as the measures to eradicate the paramilitary phenomenon.

53. Likewise, in the section corresponding to Reparations (infra para. 240 and 276 to 282) the Court will assess whether the abovementioned partial agreement on reparations is compatible with the pertinent provisions of the American Convention. [FN18] With regard to the section of the partial agreement among the parties titled "reparation issues in dispute", the Court will rule upon the issues related to guarantees of non-repetition and claims for pecuniary and non-pecuniary damages for the issues which remain in dispute, based upon its jurisprudence and the body of evidence in this case (infra para. 246 to 274 and 284 to 306).

[FN18] Cf. Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 90; Case of Durand and Ugarte. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 89, para. 23; and Case of Barrios Altos. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, para. 23.

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54. Keeping in mind its attributes as an institution responsible for the supervision of the most complete protection of human rights, as well as the context in which the facts of the present case occurred, the Tribunal deems it necessary to issue a Judgment in which the facts and every element of the merits of the case, and the corresponding consequences are determined. This Judgment will constitute a form of redress for the victims' next of kin, a contribution to preservation of historical memory, a method for avoiding that similar events be repeated, and a means of satisfying, in sum, the objectives of the Inter-American System for Human Rights. [FN19] Therefore, without prejudice to the scope of the acknowledgment of responsibility made by the State, the Court deems it appropriate to assess the facts of the present case, both those acknowledged by Colombia as well as the others included in the application. Moreover, the Court deems it necessary to make some findings regarding the manner in which the violations occurred, within the context and circumstances of the case, as well as the determination of the scope of some of the obligations established in the American Convention. This analysis will be undertaken in the corresponding sections. In these sections the Court will also analyze the facts, the merits, and the reparations of the remaining controversy over the extent of the State's international responsibility.

[FN19] Cf. Case of La Cantuta, supra note 8, para. 57; Case of Vargas Areco, supra note 8, para. 66; Case of Goiburú et al., supra note 11, para. 53, and Case of Servellón García et al. Judgment of September 21, 2006. Series C No. 152, para. 78.

V. EVIDENCE

55. As established in Articles 44 and 45 of the Rules of Procedure and the Tribunal's jurisprudence with regard to evidence and its assessment, [FN20] the Court will proceed to examine and assess the documentary elements of evidence presented by the Commission, the representatives, and the State at several procedural stages. It will also examine and assess the documentary evidence submitted as evidence to facilitate adjudication of the case requested by the President and the Court, as well as the testimonial statements and expert opinions offered through affidavit, written sworn statements, or in public hearing before the Court. To this end, the Tribunal will follow the principles of reasoned judgment, within the corresponding legal framework. [FN21]

[FN20] Cf. Case of La Cantuta, supra note 8, para. 59; Case of Nogueira de Carvalho et al. Judgment of November 28, 2006. Series C No. 161, para. 55; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 80; and Case of Almonacid Arellano e al., supra note 16, para. 66 to 69.

[FN21] Cf. Case of La Cantuta, supra note 8, para. 59; Case of Nogueira de Carvalho et al., supra note 20, para. 62; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 80; and Case of Goiburú et al., supra note 11, para. 55.

A) DOCUMENTARY EVIDENCE, TESTIMONIES, AND EXPERT OPINIONS

56. With regard to the documentary evidence, the following witnesses proposed by the representatives presented written statements before a notary public on the extrajudicial killings of their next of kin, the search for justice and the alleged impunity in the case, their situation and that of their families before and after the massacre, and the alleged damages suffered by the families: María Carmenza Morales Cepeda, sister of César Augusto Morales Cepeda; Paola Martínez Ortiz, partner of Luis Orlando Hernández Muñoz; Luz Nelly Carvajal Londoño, wife of Yul Germán Monroy; Nubia Vesga Fonseca, sister of Gabriel Enrique Vesga Fonseca; Myriam Stella Morales Caro, sister of Mariela Morales Caro; Sócrates Vesalio Guasca Castro, brother of Benhur Iván Guasca Castro; Alfonso Morales Cárdenas, brother of Orlando Morales Cárdenas; Luz Marina Poveda León, wife of César Augusto Morales Cepeda; Sandra Paola Morales Poveda, daughter of César Augusto Morales Poveda; Luz Mireya Morales Cepeda, sister of César Augusto Morales Poveda; Erika Esmeralda Vargas Herrera, daughter of Samuel Vargas Páez; Esperanza Uribe Mantilla, wife of Pablo Antonio Beltrán Palomino; Elvia Ferreira Useche, wife of Arnulfo Mejía Duarte; and Alonso Castillo Mayoral, father of Carlos Fernando Castillo Zapata.

57. The witness statements and the expert reports offered through affidavit, sworn statement, and written statement of the following people were also presented as documentary evidence:

a) Federico Andreu Guzmán, a witness proposed by the Commission and by the representatives. In the framework of his functions as an investigator at an international Non-Governmental Organization, he carried out an investigation about the events of The Rochela for a two-year period, starting a few weeks after the massacre. The witness testified on the alleged forms of collaboration between state agents and the paramilitary groups, and specifically on the alleged forms of collaboration between these groups and agents of the State in the area of the massacre of The Rochela, as well as the alleged actions and omissions of the State in the investigation of the massacre of The Rochela.

b) Antonio Suárez Niño, a witness proposed by the representatives. The witness acted as President of the National Association of Officials and Employees of the Judicial Branch of Colombia [Presidente de la Asociación Nacional de Funcionarios y Empleados de la Rama Judicial de Colombia] between 1988 and 1997. The witness testified about the alleged paramilitary violence against the judicial branch, the alleged risks faced by the judicial officials who investigate and prosecute violations of human rights and infringements of international humanitarian law, as well as the alleged intimidation and other effects of the Rochela Massacre on the Judicial Branch of Colombia.

c) Luis Guillermo Pérez Casas, a witness proposed by the representatives and the attorney who represented the civil party in the criminal proceedings of the Rochela Massacre as a member of "José Alvear Restrepo" Legal Cooperative. The witness testified about the alleged factual and legal obstacles that have been present during the 18 years of criminal proceedings related to this case.

d) Luis Carlos Restrepo, a witness proposed by the State who is the High Commissioner for Peace [Alto Comisionado para la Paz]. The witness testified about the paramilitary demobilization process, in particular, the agreements reached between the Government and paramilitary groups, the acts of collective demobilization, as well as the delivery of weapons and proprietary goods of the paramilitaries.

e) Edgar Ceballos Mendoza, a witness proposed by the State who is a Brigadier General and Head of Joint Operations of the General Command of Military Forces [Mayor General y Jefe de Operaciones Conjuntas del Comando General de las Fuerzas Militares]. The witness testified about the decrees issued between April of 1989 and February 2000. He also testified about the orders, instructions, strategies and directives adopted by the Military Forces between 1996 and 2006 relating to the criminalization and fight against the illegal self-defense groups, as well as the alleged operational results of this campaign.

f) José Daniel Castro, a witness proposed by the State who is General and Director of the National Police [General y Director de la Policía Nacional]. The witness testified about the alleged advances made in dismantling the illegal self-defense groups during the period 1998 – 2006, and the alleged improvement in the security situation in Colombia, within the framework of the so-called Policy of Defense and Democratic Security [Política de Defensa y Seguridad Democrática].

g) Guillermo Mendoza Diago, a witness proposed by the State who is the Assistant Attorney General of the Nation [Vicefiscal General de la Nación]. The witness testified about the operation and alleged strengthening of the National Human Rights and International Humanitarian Law Unit [Unidad Nacional de Derechos Humanos y Derecho Internacional

Humanitario] and the National Prosecutors Unit for Justice and Peace [Unidad Nacional de Fiscalías para la Justicia y la Paz].

h) Héctor Cruz Carvajal, a witness proposed by the State who is a Specialized Prosecutor [Fiscal Especializado] for the National Human Rights and International Humanitarian Law Unit. The witness testified about the investigations that have developed and continue to be carried out in relation to the Rochela Massacre case.

i) Nubia Herrera, [FN22] a witness proposed by the State who at the time of her testimony was the National Vice Procurator General [Viceprocuraduría General de la Nación]. The witness referred to disciplinary investigations that had moved forward with regard to the Rochela Massacre and the intervention of the National Office of the Procurator General [Procuraduría General de la Nación] in the conciliation proceedings before the contentious administrative courts.

j) Carlos Franco Echavarría, a witness proposed by the State who is the Director of the Presidential Program on Human Rights and International Humanitarian Law. The witness testified about the alleged initiatives put forward by the Presidential Program to grant measures of reparation to the victims and their families in the present case, particularly with regard to educational and work benefits.

k) Iván Cepeda Castro, an expert proposed by the representatives who is a philosopher and investigative reporter on matters of human rights and humanitarian law. The expert offered his report on the alleged absence of guarantees of non-repetition in order to achieve the definitive dismantling of paramilitarism as a counter-insurgent strategy in Colombia, the alleged continuity and strengthening of paramilitarism in the conditions of the current process of demobilization and the alleged insufficiencies of the juridical framework in force in order to satisfy the guarantees of non-repetition and the victims' rights.

l) Felicitas Treue, an expert proposed by the representatives who is a consultant in mental health and training at the Collective Against Torture and Impunity (CCTI) [Colectivo Contra la Tortura y la Impunidad] of Mexico. The expert offered her expert opinion on the alleged serious effects and the alleged psychological damages suffered by 50 of the victims of the Rochela Massacre and the medical and psychological treatment allegedly needed by the victims of the massacre and their next of kin.

m) Pablo Andrés Fernández, an expert proposed by the representatives who is a public accountant with experience in estimating wages and earnings. In his expert opinion, he offered estimates of the lost wages of the deceased victims of the massacre, based on the actual value of the income they would have received throughout their lives if they would have continued in the judicial branch. Likewise, the expert compared these estimates with the amounts granted by the Council of State [Consejo de Estado] to some of the victims' next of kin.

[FN22] The witness whose testimony was requested by the President of the Court in the Order of December 22, 2006 was Carlos Gómez Pavajeau, Assistant Attorney General of the Nation. However, on January 16, 2007, the State relayed to the Court that Mr. Gómez Pavajeau was absent from his position due to vacation. Instead, the State offered in good faith the affidavit of Ms. Nubia Herrera, who substituted for Mr. Gómez during his vacation time (infra para. 61).

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58. With regard to the evidence offered in the public hearing, the Court heard the testimonial statements and expert opinions [FN23] of:

a) Arturo Salgado Garzón, a witness proposed by the Commission and by the representatives who is an alleged surviving victim of the Rochela Massacre. Mr. Salgado testified about the events before, during and immediately after the massacre, the alleged actions and omissions in the investigation, his alleged situation of risk after the massacre, and the alleged damage caused to him and his next of kin.
b) Virgilio Alfonso Hernández Castellanos, a witness proposed by the Commission and by the representatives who is the son of victim Virgilio Hernández Serrano. The witness testified about the extrajudicial killing of his father and the other members of the Judicial Commission, the alleged actions and omissions in the investigation of the massacre, the alleged damage caused as a consequence of the massacre, and the measures of reparation due.
c) Olegario Gutiérrez, a witness proposed by the representatives who was the companion of victim Mariela Morales Caro. The witness testified about the execution of his companion, the search for justice and reparation, the situation of the family before and after the massacre and the alleged damages suffered by the family.
d) Alejandra María Beltrán Uribe, a witness proposed by the representatives who is the daughter of victim Pablo Antonio Beltrán Palomino. The witness testified about the execution of her father, the search for justice, the psychological effects caused by the death of her father, her situation as well as that of her family prior to and after the massacre, the alleged damage suffered by the family, and in particular, the alleged effects of her father's execution on the deteriorating health of her brother.
e) Rodolfo Arango Rivadeneira, an expert proposed by the representatives who is a university professor and holds a doctorate in constitutional law. The expert offered his expert report on the normative context of the paramilitary demobilization, the scope of the Constitutional Court's judgment in C-370 of 2006 and the alleged violation of the victims' fundamental rights.
f) Ramiro Saavedra Becerra, an expert proposed by the State who is President of the Council of State. The expert offered his expert report on the elements required to substantiate a claim against the State for damages which arose from failures in its service delivery and the parameters used by the Colombian Council of State in matters of reparation for this type of liability.
g) Eduardo Pizarro Leongómez, an expert proposed by the State is President of the National Commission on Reparation and Reconciliation [Presidente de la Comisión Nacional de Reparación y Reconciliación]. The expert offered his expert opinion on the alleged activities carried out by the Colombian State to provide redress to victims of gross violations of human rights within the context of the Justice and Peace Law and the alleged dismantling of the paramilitary phenomenon.

[FN23] Alleging a situation beyond its control, the State removed expert witness Augusto Ramírez Ocampo who had been summoned by the President (record of witness statements and expert reports, volume III, pages 7548 and 7555).

B) ASSESSMENT OF THE EVIDENCE

59. In this case, as in others, [FN24] in application of Articles 45(1) and 45(2) of the Rules of Procedure, the Tribunal admits the probative value of the documents and observations presented by the parties in a timely fashion, and the evidence to facilitate adjudication of the case, to which no objection was raised, and whose authenticity was not questioned or disputed. With regard to articles published by the press that were presented by the parties, the Tribunal considers that they may be assessed when they include public or notorious facts, or statements of State employees or when they corroborate aspects related to the case [FN25] verified by other means. Additionally, the Court adds the documents presented by the representatives and the State at the end of the public hearing held on January 31 and February 1, 2007 to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure and since it considers them useful in the ruling of this case.

[FN24] Cf. Case of La Cantuta, supra note 8, para. 62; Case of Goiburú et al., supra note 11, para. 57; and Case of Ximenes Lopes. Judgment of July 4, 2006. Series C No. 149, para. 48.
[FN25] Cf. Case of La Cantuta, supra note 8, para. 65; Case of Nogueira de Carvalho et al., supra note 20, para. 65; and Case of the Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 86.

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60. With regard to the testimonies and expert opinions offered by the witnesses and experts, the Court considers them relevant inasmuch as they conform to the objective of testimony defined by the President in the Order in which he called for their reception (supra para. 7), taking into account the observations presented by the parties. This Tribunal considers that the testimonial statements offered by the victims cannot be assessed in isolation, given their direct interest in this case, and thus their statements will be assessed within the totality of the evidence presented in this case. [FN26] Likewise, the Court accepts the State's withdrawal of expert witness Augusto Ramírez Ocampo's written statement (supra para. 58).

[FN26] Cf. Case of La Cantuta, supra note 8, para. 64; Case of the Miguel Castro Castro Prison, supra note 8, para. 196; and Case of Almonacid Arellano et al., supra note 16, para. 78.

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61. The Commission and the representatives objected to the substitution of the sworn statement of witness Nubia Herrera for that of Carlos Gómez Pavajeau (supra para. 57.i), arguing that its presentation contradicts the order to convene the public hearing in which the President rejected the State's request to substitute some of the deponents with a State official temporarily in charge of their functions. Likewise, the Commission argued that Ms. Herrera's statement "does not conform to the object of testimony requested from witness Gómez Pav[aj]eau" and that it "only [makes] reference to the practices of the National Procurator" and does not refer to the facts about which the witness was called to testify in the order to convene the public hearing. Further, the representatives added that "a large part of [the statement] is totally irrelevant" and "[w]hat is relevant is the information included on page 28 of the statement, which confirms that

the disciplinary action in three disciplinary proceedings put forward concerning the massacre of The Rochela was time-barred and therefore, no state official was disciplinarily sanctioned in relation to the case." For its part, the State indicated that "it acknowledges that it cannot argue […] that due to vacation periods at the domestic level it cannot present evidence," however, in good faith it presents the statement and submits it for observation from the other parties. On this issue, the Court finds that the statement includes information about the disciplinary investigations that were put forward in response to the events of the Rochela Massacre. The Court adds the information included in the statement that specifically refers to the facts of the Rochela Massacre to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure and because it considers it useful in deciding this case.

62. The State indicated that "the statement presented by Guillermo Pérez Casas was not presente[d] before a notary public, or before any authority" and that the original and complete version "was presented extemporaneously", which "abridges the State's right of defense", reasons for which it requests that "it not be taken into consideration" in the analysis of the case. In this regard, the Tribunal notes that on other occasions it has admitted sworn statements that were not given before a notary public when this does not affect juridical security or the procedural balance between the parties, [FN27] which have been respected and guaranteed in this case. However, taking into consideration that the complete version of the this statement was presented extemporaneously, and that it contains evidence that could be useful in deciding the present case, the Tribunal includes it in the body of evidence, founded upon Article 45(1) of the Rules of Procedure, and taking into account the observations presented by the State.

[FN27] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 189; Case of Servellón García et al., supra note 19, para. 46; and Case of Claude Reyes et al. Judgment of September 19, 2006. Series C No. 151, para. 51.

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63. The Court takes note of the State's observations with regard to the statements of María Carmenza Morales Cepeda, Myriam Stella Morales Caro, Antonio Suárez Niño, Iván Cepeda Castro and Federico Andreu Guzmán, in the sense that "the context [presented in the application and in the brief containing pleadings and motions] is not in debate" in the present case. This argument will be analyzed in the present Judgment (infra para. 69 to 72 and 76 to 91).

64. In application of Article 45(1) of the Rules of Procedure, the Court includes in the body of evidence in the present case the judgment C-014 issued on January 20, 2004 by the Constitutional Court of Colombia, the Second Report on the Situation of Human Rights in Colombia issued on October 14, 1993 by the Inter-American Commission on Human Rights (OEA/Ser. L/V/II.84 Doc. 39 rev. 14 October 1993), as well as the following evidence produced in the case of the 19 Tradesmen: Legislative Decree 3398 of December 24, 1965; Law 48 of December 16, 1968; the judgment issued on April 14, 1998 by the National Tribunal [Tribunal Nacional]; and the Report of the Special Rapporteur of the United Nations on Summary or Arbitrary Executions with regard to a visit completed on 11th to the 20th of October 1989 (E/CN.4/1990/22/Add.1 of January 24, 1990).

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65. Having examined the evidentiary elements that have been included in the record of the present case, the statements made by the parties, as well as the recognition of responsibility made by the State (supra para. 8 to 54), the Court will analyze the alleged violations in the present case, in consideration of the facts acknowledged by the State and those that are proven, [FN28] which are included in each of the corresponding sections. Likewise, the Court will consider the parties' arguments that are pertinent to analyze, taking into account the State's recognition of responsibility.

[FN28] Going forward, the present Judgment contains facts that this Tribunal has established based upon the recognition of facts and responsibility by the State, in the order and with the precise and relevant facts presented in the application. Some of the facts have been completed by other pieces of evidence, in which case these elements will be marked by footnotes on the respective pages. Additionally, different paragraphs refer to proven facts in the Case of the 19 Tradesmen, already heard by the Inter-American Court, in which appropriate footnotes have been left. Furthermore, the Tribunal has established the facts relevant to the open criminal proceedings, on the basis of the State's recognition of responsibility and the evidence from the domestic criminal proceedings records, which were presented to the Court by the parties.

VI. INTERNATIONAL RESPONSIBILITY OF THE STATE IN THE PRESENT CASE

66. The previous section addressed the terms of the State's acceptance of the facts of the instant case, as well as its partial recognition of international responsibility (supra para. 8 to 54). In this section the Court deems it necessary to clearly establish the reasons which have given rise to the international responsibility of the State in the present case, taking into consideration that a controversy has arisen regarding the context in which the events occurred, the alleged activities undertaken by paramilitary groups as State agents, and, at the time of the events, the alleged institutional policy promoting paramilitarism.

67. This Tribunal has established that international responsibility of States, pursuant to the provisions of the American Convention, arises from a violation of general obligations, in the nature of erga omnes, to respect and enforce respect for – guarantee – norms of protection and to ensure the effectiveness of the rights enshrined therein, under all circumstances and for all persons, as embodied in Articles 1(1) and 2 of the Convention. [FN29] Special duties derive from these general obligations which are ascertainable on the basis of the protection needed by the individual who is the subject of the right, either on account of his personal situation or of the specific circumstances pertinent thereto. In this regard, Article 1(1) is essential for the purpose of determining whether a violation of human rights recognized by the Convention may be entirely attributable to a State Party. In effect, said Article prescribes fundamental the duties incumbent upon States Parties to respect and guarantee the rights recognized in the Convention, so that any impairment of the human rights enshrined therein can be attributed, in accordance with the rules of international law, to an action or omission of any State official, constituting an act imputable to the State which entails its international responsibility pursuant to the provisions of the

Convention and of international law in general. It is a tenet of international law that the State is responsible for the acts and omissions of its agents acting in their official capacity, even when those agents act outside the scope of their authority. [FN30]

[FN29] Cf. Case of the Pueblo Bello Massacre, supra note 12, para. 111; Case of the Mapiripán Massacre, supra note 12, para. 111; and Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 140.
[FN30] Cf. Case of the Pueblo Bello Massacre, supra note 12, para. 111; Case of the Mapiripán Massacre, supra note 12, para. 108; and Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 72.

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68. The international responsibility of the State results from "the acts or omissions of any of its bodies or agencies, regardless of their authority, which are in violation of the Inter-American Convention." [FN31] For the purpose of establishing that a violation of the rights enshrined in the Convention has been committed, it is not required, as it is under domestic criminal law, that the perpetrators' liability or intent be established. Nor is it required that the agents to whom such violations are attributed be identified individually. [FN32] Rather, it is sufficient to prove that public officials have provided support to or shown tolerance for the violation of rights enshrined by the Convention, [FN33] that their omissions have enabled the commission of such violations, or that the State has failed to comply with any of its duties. [FN34]

[FN31] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 31; Case of the Pueblo Bello Massacre, supra note 12, para. 112; and Case of the Mapiripán Massacre, supra note 12, para. 110.
[FN32] Cf. Case of La Cantuta, supra note 8, para. 156; Case of the Pueblo Bello Massacre, supra note 12, para. 112; and Case of the Mapiripán Massacre, supra note 12, para. 110.
[FN33] Cf. Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 141. In the same sense, cf. Case of Cantos. Judgment of November 28, 2002. Series C No. 97, para. 28; and Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 66.
[FN34] Cf. Case of Pueblo Bello Massacre, supra note 12, para. 112; Case of the Mapiripán Massacre, supra note 12, para. 110; and Case of the 19 Tradesmen, supra note 33, para. 141.

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69. The parties have raised several matters in controversy regarding the determination of State international responsibility for the events in the instant case.

70. Regarding the events described in the instant case, the State asserted that it has only acknowledged its responsibility for "the facts which specifically relate to the 'The Rochela' massacre, whereby it "categorically rejects any findings about the 'context' [which] might suggest that 'paramilitarism' was a product of a generalized policy of the Colombian State". As

consequence, the State rejected all evidence that support the allusion of this context (supra para. 31). Therefore, the State argued that its recognition of responsibility refers only to "isolated acts" committed by various state agents; "it has been proven that there was not institutional relationship or dependence between the groups which operated illegally and various state agents"; and "no official duties were delegated to private individuals". Furthermore, Colombia pointed out that "it can no longer be charged with" the creation of "a special (but legally tolerable) risk situation" derived from the fact that it issued Decree 3398 of 1965 and Law 48 of 1968, the legal instruments which allowed the creation of self-defense groups, as it has adopted "measures […] tending to mitigate the negative consequences of their particularly dangerous activities".

71. For its part, the Commission argued that the massacre "did not take place in a vacuum," but "as consequence of a series of actions and omissions that took place days before and in a determined social and normative context." Furthermore, the Commission pointed out that the creation of paramilitary groups was promoted by the State as a counterinsurgency tool with the help of legal norms that remained in force at the time of the Rochela Massacre. It further argued that "in cases in which paramilitaries and members of the Army carry out operations jointly or when paramilitaries are enabled by the acquiescence [or] cooperation of State security forces, the members of such groups should be considered to be acting as State agents". According to the Commission, in the instant case, "evidence exists to demonstrate the commission of acts by State agents and paramilitary groups in the execution of the Rochela Massacre" and, therefore, "the violations of the Inter-American Convention committed as a result of the acts and omissions of State agents, and those committed by the members of the self-defense group which operated in the region with their support, are attributable to the State and, consequently, the members of such group must be deemed to have acted as State agents."

72. With regard to the controversies referred to above, the representatives argued that "the Court must adhere to its sustained practice of considering and analyzing the Rochela Massacre in the appropriate legal and historical context". Furthermore, the representatives pointed out that paramilitarism "had its origins in a counterinsurgency policy designed and implemented by the State itself" and that the members of the paramilitary group who carried out the massacre "were acting as State agents," since "the Army, in line with a policy established by law, equipped, trained and operated in coordination with a paramilitary group in the commission of gross violations of human rights."

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73. First of all, the Court will determine some of the facts described in the instant case.

74. The State recognized that on January 18, 1989, at least forty members of the "Los Masetos" paramilitary group, acting with the cooperation and acquiescence of State agents, initially detained the fifteen victims of the present case, who were members of a Judicial Commission (Mobile Investigative Unit) [Unidad Móvil de Investigación] made up of two criminal preliminary investigation judges, [FN35] two judicial officers [FN36] and eleven members of the Technical Corps of the Judicial Police (CTPJ) [FN37] and later carried out a

massacre against them, as a result of which twelve of them were killed, while three survived the attack.

[FN35] Mariela Morales Caro and Pablo Antonio Beltrán Palomino, judges appointed to the Judicial District of San Gil (Department of Santander) [Distrito Judicial de San Gil].
[FN36] Virgilio Hernández Serrano, Secretariat of the Fourth Court of Criminal Investigation [Secretario del Juzgado Cuarto de Instrucción Criminal]; and Carlos Fernando Castillo Zapata, Secretariat of the Seventeenth Court of Criminal Investigation [Secretario del Juzgado Diecisiete de Instrucción Criminal].
[FN37] Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, Cesar Augusto Morales Cepeda, Arturo Salgado, Wilson Montilla, and Manuel Libardo Díaz Navas, investigating agents; Samuel Vargas Páez, director of said Technical Corps; and Arnulfo Mejía Duarte, Director of the Preliminary Investigative Unit of Barrancabermeja [Unidad de Indagación Preliminar de Barrancabermeja].

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75. The Sectional Directorate for Criminal Investigation [Dirección Seccional de Instrucción Criminal] had appointed the members of this Judicial Commission in an order of December 20, 1988, with a "mandate to continue […] the investigations [which were in progress] into a spate of murders and disappearances" that had occurred in the region of Magdalena Medio, Department of Santander. [FN38] Among the events under investigation was the alleged detention, by the Army, of two peasants who were later "tortured, massacred, and burnt with acid," [FN39] as well as the disappearance of nineteen tradesmen that had occurred in October of 1987. Taking into consideration the alleged involvement of members of the Army in some of these crimes, the two judges who were in charge of the investigations addressed an official letter to the Sectional Director of Criminal Investigation [Director Seccional de Instrucción Criminal], wherein they informed him that they considered "it to be of the utmost importance for the success of the investigation that a commission of the Office of the Procurator be appoint[ed] so that, in addition to the investigation charged to the Mobile Investigative Unit, a simultaneous investigation be conducted with regard to criminal offenses attributable […] to the military patrol" [FN40] allegedly responsible for some of the violations of human rights under investigation.

[FN38] Cf. Official Communication No. 231 of December 28, 1988 drafted by the Judges of Criminal Investigation, Mariela Morales Caro and Camilo Navarro Velásquez to the Sectional Director of Criminal Investigation (record of evidences to the brief containing pleadings and motions, volume VI, appendix 56.2, pages 3599 to 3603).
[FN39] Cf. supra note 38 (Official Communication No. 231), pages 3600 y 3601.
[FN40] Cf. supra note 38 (Official Communication No. 231), page 3601.

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76. On the other hand, the State's position rejects all contextual findings (supra para. 11, 31 and 70). The Court deems it relevant to point out that in all cases submitted to this body, it has required that the context be taken into consideration because the political and historical context is a determinant element in the establishment of the legal consequences in a case. Such consequences include the nature of the violations of the Convention and the corresponding reparations. [FN41] For this reason, the analysis of the events that occurred on January 18, 1989, which the State recognized, cannot be considered separately from the context in which they took place. Likewise, their legal consequences cannot be established in a vacuum, which is what would result from their decontextualization.

[FN41] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 202; and Case Goiburú et al., supra note 11, para. 53, 54 and 63.

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77. Next, in order to establish the causes which have given rise to international responsibility in the instant case, the Court will analyze the context in which the alleged events occurred.

78. This Court has already gone on record with regard to Colombia's responsibility for the creation of a legal framework which promoted the formation of self-defense groups, later to become paramilitary organizations, [FN42] and for its failure to adopt such measures as may be necessary to effectively put an end to the situation of risk generated by the State itself through the enforcement of such legal provisions [FN43]. Furthermore, the Court has declared Colombia responsible for the failure of members of the Armed Forces or by the security of the State to adopt effective measures of prevention and protection for the civil population which has encountered reasonably foreseeable situations of risk because of paramilitary activity. [FN44] At the same time, on several occasions the Court has established Colombia's responsibility for the violations committed by paramilitary groups who have acted with the support, acquiescence, involvement, and cooperation of State security forces. [FN45]

[FN42] Cf. Case of the 19 Tradesmen, supra note 33, para. 115 to 124.
[FN43] Cf. Case of the Ituango Massacres, supra note 15, para. 134 and 135; and Case of the Pueblo Bello Massacre, supra note 12, para. 125 to 127, 139 and 140.
[FN44] Cf. Case of the Pueblo Bello Massacre, supra note 12, para. 126 and 140.
[FN45] Cf. Case of the Ituango Massacres, supra note 15, para. 125.1, 125.25 and 133; Case of the Mapiripán Massacre, supra note 12, para. 121 to 123; and Case of the 19 Tradesmen, supra note 33, para. 84.b), 115, 134, 135, 137 and 138.

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79. It is also important to point out that one of the main factors which augment the seriousness of the events described in the instant case is that the State is responsible for a massacre which was carried out against its own judicial officers while they were performing their duty to investigate gross violations of human rights, and that State agents who were members of the armed forces were involved in the massacre.

80. The foregoing was not an isolated incident in Colombia. On the contrary, the massacre was part of a context of violence committed against judicial officers. At the time of the events of this case, judicial officers were the victims of frequent attacks in Colombia. Between 1979 and 1991, an annual average of 25 judges and lawyers were killed or were victims of an attempted homicide. Among the cases being investigated at the time, 80 were charged to paramilitary groups, 48 to State agents, 32 to the guerrillas, and 22 to other factors. [FN46] In his report on a visit to Colombia in October 1989, the United Nations Special Rapporteur on Summary or Arbitrary Executions wrote that:

In recent years, the victims have included a Minister of Justice, an Attorney-General of the Nation, various justices of the Supreme Court and High Courts and many judges and judicial officials. A number of Ministers of Justice are reported to have been compelled to resign because of the death threats that hung over them and/or their relatives […]. [FN47]

[FN46] Cf. ICHR, Second Report on the Situation of Human Rights in Colombia, 1993, OEA/Ser. L/V/II.84 Doc. 39 rev.14. October 1993, Chapter IV.F.e); and affidavit rendered by Antonio Suárez Niño of January 18, 2007 (record of witness statements and expert reports, volume II, pages 7288 to 7290).

[FN47] Report on the visit to Colombia by the Special Rapporteur on Summary or Arbitrary Executions (11-20 October 1989) Doc. E/CN.4/1990/22/Add.1, January 24, 1990, para. 43.

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81. The events described in the instant case occurred in a context of violations against judicial officers designed to impede them in their duties and to intimidate and discourage them, in order to achieve impunity for gross violations of human rights. It was in this context of risk for judicial officers that the State failed to adopt the necessary measures to guarantee the safety of the members of the Judicial Commission while they were performing their duties, a situation which has been recognized in several judgments rendered by the Council of State [FN48] and which Colombia has recognized as an omission in these international proceedings (supra para. 10 and 11).

[FN48] Cf. Judgments issued by the Third Division of the Contentious Administrative Courts of the Council of State [Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Tercera] on May 19, 1995, February 1, 1996, July 5, 1996 and August 29, 1996 (record of evidences to the State's reply brief, volume II, pages 5313 to 5327, 5190 to 5204, 5257 to 5291, and 5346 to 5291).

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82. As to the legal framework, the Court recalls that, because the events described in the instant case occurred in January, 1989, they fall within the context analyzed by the Court in the Case of 19 Tradesmen, [FN49] whose events occurred in October 1987. The Court held that, within the framework of the fight against guerrilla organizations, Colombia was responsible for the creation of legal structures [FN50] promoting the creating of self-defense groups [FN51], which later became paramilitary organizations. [FN52] This legal framework was in force at the

time of the Rochela Massacre. The State both granted the members of such groups the right to bear and possess arms, and provided them with logistic support. [FN53]

[FN49] Cf. Case of the 19 Tradesmen, supra note 33, para. 115 to 124.
[FN50] Legislative Decree 3398 of 1965 was adopted as permanent legislation by Law 48 of 1968 and issued in response to the fight against guerrilla groups whose operations were grounds for the State to declare the "public order to be disturbed and a state of siege to be imposed throughout the national territory." Articles 25 and 33 of Legislative Decree 3398 provided the legal grounds for the creation of "self-defense groups." The abovementioned Article 25 provided that "[a]ll Colombians, men and women, who were not affected by the call into mandatory military service, co[u]ld be required by the Government to perform activities and tasks contribut[ing] to re-establish the normal situation." Furthermore, paragraph 3 of the abovementioned Article 33 provided that "[th]e Ministry of National Defense, acting through the authorized commands, may, where it shall deem it convenient, use as its private property the weapons restricted for the exclusive use of the Armed Forces." Cf. Case of 19 Tradesmen, supra note 33, para. 84.a).
[FN51] The object of said groups was to mobilize the civil population to help State security forces in anti-subversive operations and defense against the guerrilla groups. Cf. Case of the 19 Tradesmen, supra note 33, para. 84.b).
[FN52] Cf. Case of the 19 Tradesmen, supra note 33, para. 84.c) and 115 to 124.
[FN53] Cf. Case of the 19 Tradesmen, supra note 33, para. 84.b).
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83. Furthermore, the judicial investigations conducted reveal the relationship that existed between paramilitary groups and State security forces at the time of the events of the instant case. [FN54] In addition, in his report on the visit to Colombia in October 1989, the United Nations Special Rapporteur on Summary or Arbitrary Executions explained that:

The paramilitary groups are trained and financed by drug traffickers and possibly, a few landowners. They operate very closely with elements of the armed forces and the police. Most of the killings and massacres carried out by the paramilitary groups occur in areas which are heavily militarized. The paramilitary groups are able to move easily in such areas and commit murders with impunity. [I]n some cases, the military or police either turn a blind eye to what is being done by paramilitary groups or give support by offering safe conduct passes to members of the paramilitary or by impeding investigations. For example, the Director of the National Criminal Investigation Department at the time The Rochela massacre said that what worried him most was that inquiries for which he was responsible were turning up more and more evidence of indulgence, tolerance, and backing of extreme right-wing groups by members of the police and army. (emphasis supplied)

[FN54] Cf. Case of the 19 Tradesmen, supra note 33, para. 86.a).
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84. Since "the 1980's, particularly since 1985, many 'self-defense groups' have changed their aims and become criminal organizations commonly known as 'paramilitaries'". However, it was not until January 1988 that the State started to respond. Decree 0180 of January 27, 1988, which classified some conduct as criminal, is the legal instrument that differentiates the instant case from the Case of the 19 Tradesmen. [FN55]

[FN55] Cf. The State issued Decree 0180 of January 27, 1988, whereby "some provisions of the Criminal Code were supplemented, while others aimed at re-establishing public order were issued." Such decree was adopted as permanent legislation by Decree 2266 of October 4, 1991 and classified, inter alia, as criminal offenses the belonging to, promoting, and directing groups of hired gunmen, as well as the manufacture or traffic of arms and ammunition for the exclusive use of Military or National Police Forces. Cf. Case of the 19 Tradesmen, supra note 33, para. 84.f).

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85. Notwithstanding the abovementioned legal instrument, it should be pointed out that on January 18, 1989, when the Rochela Massacre was carried out: a) several years had passed since it became evident that self-defense groups had turned into paramilitary groups; and b) the relevant provisions of 1965 and 1968 were still in full force and effect. Such provisions promoted the creation of self-defense groups. For example, paragraph 3 of Article 33 of Legislative Decree 3398 of 1965, granted powers to the National Defense Ministry to authorize private individuals to bear arms which were for the exclusive use of the Armed Forces (supra para. 82 footnote 50) and provided the basis for the military regulations which promoted the formation of the "Los Masetos" paramilitary group (infra para. 88 and 89).

86. It was three months after the events of this case that Colombia issued Decree 815, whereby the abovementioned paragraph 3 of Article 33 of Legislative Decree 3398 was annulled. Decree 815 took into account that "some sectors of public opinion" interpreted such provisions of 1965 and 1968 as "an official authorization to organize civilian armed groups which operated outside the law and the Constitution." [FN56]

[FN56] Cf. Decree 0815 of April 19, 1989. Later, through a judgment of May 25, 1989, the Supreme Court of Justice found the abovementioned paragraph 3 of Article 33 of Legislative Decree 3398 of 1965 to be "unenforceable." It was also months after the La Rochela massacre had been carried out that, by means of Decree 1194 of June 8, 1989, the State classified as criminal offenses the promoting, financing, organizing, directing, fostering, and carrying out acts "aimed at the formation or entry of persons to armed groups commonly known as death squads, gangs of hired gunmen or private justice groups, mistakenly called paramilitary groups." The State also classified as criminal offenses the training or equipping of "persons in military tactics, techniques, or procedures for engaging in criminal activities" undertaken by the abovementioned armed groups. Cf. Case of the 19 Tradesmen, supra note 33, para. 84(g) and 84(h) and 121.

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87. Thus, it was only after the Rochela Massacre had been carried out that the State annulled the legal framework, which provided the grounds for the creation of such armed civilian groups.

88. Another aspect of the legal framework in force at the time of the Rochela Massacre concerned activities undertaken by members of self-defense groups to patrol and support the execution of combat and military intelligence operations. The representatives submitted as evidence a copy of provisions which contain information about these activities as well as information that highlights duties by members of the Armed Forces to organize and control such groups under provisions called, the "Regulations for Counter Guerrilla Combat Operations" [Reglamento de Combate de Contraguerrillas] [FN57] and the "COUNTER-GUERRILLA COMBAT MANUAL" [COMBATE CONTRA BANDOLEROS O GUERRILLEROS], [FN58] which were approved by the Military General Commander on April 9, 1969 and June 25, 1982, respectively. The State did not file any observations regarding the content, implications, and legal force of these provisions.

[FN57] These Regulations provide that they would be identified as "REGLAMENTO EJC 3-10 RESERVADO" (record of evidences to the brief containing pleadings and motions, volume VIII, evidence 72, pages 3740 to 3747). The manual provided that among the objectives of the operations designed to organize the civilian population was "to organize civilians militarily so that they may defend themselves from guerrilla actions and support the execution of combat operations." Furthermore, it was provided that "[t]he self-defense Committee is a military-like organization made up of civilians […] who are trained and equipped to execute actions against guerrillas who threaten the area or to operate in conjunction with combat troops," and that "[t]he self-defense Committee must have direct control over the combat area military unit, and to that purpose, the commander shall appoint an officer or a non-commissioned officer who will be responsible for issuing relevant orders and for training the group. Among the "[m]issions which may be accomplished by the self-defense committee," the Regulations include that of "[p]erforming the duties of mobile reconnaissance patrols to guard critical areas in towns and districts […] and taking part in control, search, and destruction operations, wherefore they may be equipped with arms and ammunition for the [exclusive] use of military forces." (emphasis supplied)

[FN58] The same Manual provides that it would be identified as "REGLAMENTO EJC-3-101 RESERVADO" (Counter-guerrilla Combat EJC-3-101) (record of evidences to the brief containing pleadings and motions, volume VIII, evidence 73, page 3750); and affidavit made by witness Federico Andreu (record of written statements and expert reports, volume III, page 7502). The manual states that organizing self-defense committees, "to train them and support them must be a permanent objective of the Military Force where the population is loyal and is determined to combat the enemy. […] Self-defense committees […p]rovide guides for military operations, patrol their own areas, provide patrols with logistic support and accomplish intelligence and counterintelligence missions." (emphasis suppled).

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89. The Court deems it necessary to emphasize that the abovementioned manual and combat regulations regulated the duties and relationships between civilian armed groups and the State security forces in greater detail and to a greater extent than the provisions contained in

Legislative Decree 3398 of 1965 (supra para. 85). In other words, there were legal regulations in force which expressly authorized that civilians be armed, trained, and organized by the State to receive orders from officers of the Armed Forces such that they might participate in and cooperate with security operations of the State. As will be shown below (infra para. 96 and 97), these legal regulations were applied in the instant case.

90. Finally, within this context, it should be noted that the Judicial Commission was investigating the case of the disappearance of the 19 Tradesmen that occurred in 1987, [FN59] among other cases. This disappearance was perpetrated by the ACDEGAM paramilitary group, [FN60] which had the support of and close links with senior leaders of the State security forces. [FN61] In this regard, when convicting one of the intellectual authors of the Rochela Massacre, the First Criminal Court of the Specialized Circuit of Bucaramanga [Juzgado Primero Penal del Circuito Especializado de Bucaramanga] took into account, inter alia, his "special interest in obstructing the investigation into the death of the tradesmen," because he had taken part in those events as one of the principal leaders of ACDEGAM. [FN62]

[FN59] The Court found Colombia internationally responsible in said case. Cf. Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109.
[FN60] The group named the Association of Farmers and Ranchers of the Magdalena Medio (ACDEGAM) was formed in 1984 in the Municipality of Puerto Boyacá as an "auto-defense group" and later became a paramilitary group.
[FN61] Cf. Case of the 19 Tradesmen, supra note 33, para. 84(d), 86(a), 86(b), 86(c), and 125 to 136.
[FN62] Cf. judgment issued on May 23, 2003 by the First Criminal Court of the Specialized Circuit of Bucaramanga that condemned Maceliano Panesso Ocampo (record of the merits, reparations, and costs, volume V, pages 1946 to 1948).

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91. The paramilitary groups ACDEGAM and "Los Masetos", which perpetrated the Rochela Massacre, had a close relationship, as can be derived from the Report of the Administrative Security Department (DAS) [Departamento Administrativo de Seguridad] of March 15, 1989, which refers to "Los Masetos" as one of the sixteen "covers frequently used by the paramilitary organization [ACDEGAM] to carry out killings and divert investigations." [FN63] Additionally, an order of January 9, 1999 issued by the Terrorism Unit of the Office of the Attorney General [Unidad de Terrorismo de la Fiscalía] states that the ACDEGAM's "highest commanders took part" in the decision to massacre the Judicial Commission. [FN64] Furthermore, in an order of March 21, 2006, the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit [Fiscalía 14 Especializada de la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario] pointed out that

> the spate of criminal offenses committed on January 18, 1989 was carried out by [a] paramilitary project [which] emerged as an the initiative of drug cartels […] and associations of ranchers, like ACDEGAM, which is the association of ranchers of the Magdalena Medio region. [FN65]

[FN63] Cf. record of evidences to the application, volume II, evidence A35, pages 647 and 648.
[FN64] Cf. record of evidences to the application, volume I, evidence A30, pages 358 and 359.
[FN65] Cf. record of evidences to the State's reply brief, volume II, evidence 3U, pages 5020, 5021 and 5025.

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92. After describing the general context prevailing at the time the events in this case, it is relevant to refer to the creation and activities of the "Los Masetos" paramilitaries, the group which carried out the Rochela Massacre, and its relationship to members of the State's security forces.

93. It has been proven that the involvement of State agents in the creation and support of the paramilitary group, which carried out the Rochela Massacre was enabled by the abovementioned legal framework (supra para. 82 to 85), particularly, by the application of the abovementioned counter-guerrilla regulations (supra para. 88 and 89).

94. First, State agents were involved in the emergence and formation of the "Los Masetos" paramilitary group. In this regard, the Council of State of Colombia maintained that:

The involvement of army members […] who promoted the formation of the group known as LOS MASETOS and who supported and covered their activities appears to have been proven in the events of the instant case; and it has further been proven that the members of such group were the perpetrators of the massacre […]. Thus, all these facts show the active involvement of members of the national army in the formation of the group of criminals who killed the members of the commission, to the extent that, as was stated by one of the preliminary criminal investigative judges conducting the investigation, it was not even possible to request the protection of the National Army, as its members were involved in these events. [FN66] (emphasis supplied)

[FN66] Cf. judgment issued on February 1, 1996 by the Third Division of the Contentious Administrative Courts of the Council of State (record of evidences to the application, volume II, evidence A82, pages 1110 and 1112).
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95. Furthermore, the State acknowledged that "Los Masetos" operated from the base located in Campo Capote, with the cooperation of Army units under the command of Lieutenant Luis Enrique Andrade Ortiz and the support of Staff Sergeant Otoniel Hernández. In this regard, the Superior Tribunal of Public Order [Tribunal Superior de Orden Público] [FN67] established that the abovementioned lieutenant "had allowed and acquiesced to the free operation of this armed group in the area," and that "he was aware of the activities undertaken by this group, and that and he showed his approval". Additionally, the abovementioned court affirmed that Lieutenant Andrade "patrol[led] the area and held all types of meetings with people who were obviously

wearing uniforms and bearing arms illegally, and who formed what witnesses compared to a real army."

[FN67] Cf. judgment issued on November 14, 1990 by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, pages 499, 501 and 502).

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96. The support that State agents provided to the paramilitary group which carried out the massacre, and the relationship existing between them, complied with the abovementioned counter-guerrilla regulations. Lieutenant Luis Enrique Andrade declared in the ordinary criminal proceedings brought against him, that he "used Julián Jaimes [, commander of the "Los Masetos" paramilitary group] as an informant for the Military base, and for this reason, he provided Mr. Jaimes with a uniform and arms required to act as a guide to locate the guerrillas." [FN68] For his part, Lieutenant Andrade's defense counsel argued that "the defendant only admitted to having hired Julián Jaimes as an Army guide, and that under the same Army regulations, he was authorized to provide Mr. Jaimes with the required uniforms and arms." [FN69] Furthermore, the abovementioned Superior Tribunal of Public Order (supra para. 95), upon an examination of Lieutenant Andrade's actions in light of these military regulations, found that:

In order to accomplish his mission [to fight guerrillas in the area under his command], he resorted to private individuals with the objective of forming a united front against insurgents. This action was the origin of the illegal and injurious actions which are under examination. It is not possible to detach his military status from the acts attributed to him, as they are inherent to and result from the special status of their perpetrator.
Not only is it obvious that in undertaking such actions the Officer overstepped the limits of his authority, but also that he always performed them in his capacity as a member of the Armed Forces and with the specific purpose of accomplishing a mission. […] [FN70] (emphasis supplied)

[FN68] Cf. supra note 67 (page 499).
[FN69] Cf. supra note 67 (page 499).
[FN70] Cf. supra note 67 (pages 502 and 503).

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97. Upon analyzing the case of Lieutenant Andrade, and taking into consideration the military regulations referred to above (supra para. 88 and 89), the Military Preliminary Criminal Investigations Court 126 [Juzgado 126 de Instrucción Penal Militar], stated that "the fact that he resorted to civilians to accomplish his mission [and provided them with military uniforms and arms], was not a decision taken on his own initiative, but a tactic that has long been used by our Colombian Army, as is demonstrated by the National Army Regulations [for Counter-guerrilla Combat, fourth edition, 1987]." [FN71] Additionally, in the judgments rendered by the Administrative Court of Santander [Tribunal Administrativo de Santander] and by the Council of State regarding the case of the Rochela Massacre, the relationship between the application of the abovementioned regulations and the formation and support of the paramilitary group, which

carried out the massacre has also been recognized. The Administrative Court of Santander found that Lieutenant Andrade's actions were undertaken "in the performance of his duties and by availing himself of his status as a military member, he organized and supported armed groups who perpetrated [the massacre]," whereby "the violations committed by this officer were linked to his duties, thus proving the relationship between them." [FN72] For its part, the Council of State argued that "the above officer undertook such activities [, providing the Los Masetos paramilitary group with arms and uniforms which were for the exclusive use of the State's security forces,] in the performance of his duties, in that his actions may not possibly be deemed to be private and independent from service," whereby it "may be inferred that the violation committed by this officer was linked to his service and, therefore, his illegal actions entail State responsibility." [FN73]

[FN71] Cf. judgment rendered on October 31, 1989 by the Military Preliminary Criminal Investigations Court 126 (record of evidences to the application, volume II, evidence A52, page 853 and 854).

[FN72] Cf. judgment rendered on February 1, 1994 by the Administrative Court of Santander in the proceedings instigated by the victim Carlos Fernando Castillo-Zapata's next of kin (record of evidence submitted by the State on November 8, 2006, pages 6798 and 6801); and judgment rendered on October 6, 1995 by the Third Division of the Contentious Administrative Courts of the Council of State (record of evidences to the brief containing pleadings and motions, volume v, evidence 23, page 3245).

[FN73] Cf. judgment rendered on September 4, 1997 by the Third Division of the Contentious Administrative Courts of the Council of State (record of evidences to the brief containing the answer to the application, volume III, evidence 32, pages 5377 and 5379).

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98. It has further been proven before this Court that meetings were held in which the decision to carry out the massacre was taken and the logistics necessary for that purpose were organized. [FN74] The evidence submitted shows the participation of well-known drug traffickers and paramilitary members in a meeting where the decision was made to kill the members of the Judicial Commission. Furthermore, in some of these meetings, members of the State's security forces allegedly took part. The evidence further shows that one of the aims of the massacre was to take or destroy the case files that the commission was carrying. [FN75]

[FN74] Cf. order rendered on January 7, 1999 by the Terrorism Unit of the Office of the Public Prosecutor (record of evidences to the application, evidence 30, pages 358 and 359); order of March 21, 2006 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the brief containing the answer to the application, volume II, evidence 3U, page 5023); judgment rendered on May 23, 2003 by the First Criminal Court of the Specialized Circuit of Bucaramanga (record of the merits, reparations, and costs, volume V, pages 1937 and 1946). In relation to the planning meetings for the massacre, this Court determined as credible the testimony of Alonso de Jesús Baquero, inter alia, that "MARCELIANO PANESSO […] participated in the meeting where it was decided to disappear the Judicial Commission. GACHA, HENRY PÉREZ, IVÁN DUQUE,

JORGE AMARILES, NELSON LESMES, RAMÓN ISAZA y EDUARDO RAMÍREZ also participated in the meeting".
[FN75] Cf. Order issued on June 30, 2005 by the Fourteenth Specialized Office of the Public Prosecutor of the Human Rights and International Humanitarian Law National Unit (record of evidences to the brief containing pleadings and motions, volume VI, evidence 56(4), pages 3639 to 3641). In such order the Office of the Public Prosecutor pointed out that it deemed the testimony given by Alonso de Jesús Baquero-Agudelo to be clear, coherent, pertinent and consistent. In his statement he pointed out that at one of the meetings where the massacre was planned "he talked to [police agent] Sarria, who decided that agent Briceño, […] would take them to the restaurant […] where the meeting was held with police [major Gil]; there they had lunch and talked about the possibility to withdraw the escort guards from the hotel where the judicial commission was staying and send some members of paramilitary groups in order to take the case files away from them." See also cf. testimony of August 30, 1996 rendered by Alonso de Jesús Baquero Agudelo before the Delegate Regional Prosecutor for Human Rights [Fiscalía Regional Delegada ante los Derechos Humanos] (record of evidences to the application, volume I, evidence A9, pages 114 to 116).
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99. The Court makes note that the State pointed out that "it acknowledges the accuracy of some specific facts related to the massacre as described by the representatives, whereby it will make no observations regarding them (pages 28 to 31)." [FN76] In this regard, on page 29 of their brief containing pleadings and motions, the representatives argued that "owing to the fact that the Judicial Commission was to conduct the investigations into serious crimes allegedly committed by the State's security forces, [s]everal military officers met in Barrancabermeja and made the decision to kill the members of the Judicial Commission in order to discontinue the investigations. [FN77]

[FN76] Cf. State's reply brief (record of the merits, reparations, and costs, volume III, page 757).
[FN77] Cf. Brief on the pleadings and motions (record of the merits, reparations, and costs, volume I, pages 186 and 187). The representatives' argument is based on testimony rendered by Jimmy Alberto Arenas within domestic proceedings. Cf. interrogatory statement [diligencia de indagatoria] of December 19, 1996 rendered by Jimmy Alberto Arenas Robledo before the National Directorate of Public Prosecutors' Offices of the National Human Rights Unit (record of the evidences to the application, volume I, evidence A11, pages 135-143); and statement of March 7, 1997 rendered by Jimmy Alberto Arenas before the National Directorate of Public Prosecutors' Office (record of evidences to the application, volume I, evidence A15, pages 179 to 182). This testimony was also reviewed by the Terrorism Unit of the Office of the Public Prosecutor. Cf. order issued on January 7, 1999 by the Terrorism Unit of the Office of the Regional Prosecutor of Bogotá (record of evidences to the application, volume I, evidence A30, pages 336 and 337).
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100. In addition to the foregoing, at the time of the events in this case, there were records of receipts and payments made to members of paramilitary groups who had been hired to work as informants or guides by the area military intelligence services that operated in the Magdalena

Medio region. [FN78] Furthermore, a report issued by DAS [FN79] and various testimonies [FN80] show that patrolling was jointly conducted by the army and the paramilitary groups operating in the area, which also used military bases, war weapons and even helicopters [FN81]. A report issued by DAS [FN82] and declarations [FN83] also allude to the use of the army communications system by paramilitary groups. Finally, at least one judicial decision, [FN84] a report by DAS, [FN85] declarations [FN86] and an expert witness [FN87] all alluded to the training received by these groups from the Army.

[FN78] Cf. expansion of interrogatory statement [ampliación de indagatoria] made on August 3, 1995 by Alonso de Jesús Baquero Agudelo before the Office of the Delegate Regional Prosecutor to the Technical Investigative Corps [Fiscalía Regional Delegada ante el Cuerpo Técnico de Investigación] (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, pages 3492 and 3493); statement of August 29, 1995 rendered by Efrén Galeano López before the Technical Investigative Corps for the Region of Cúcuta (record of evidences to the brief containing pleadings and motions, volume VI, evidence 48, pages 3500 to 3502); expansion of interrogatory statement made on February 12, 1996 by Alonso de Jesús Baquero Agudelo before the National Human Rights Unit [Unidad Nacional de Derechos Humanos] (record of evidences to the brief containing motions and arguments, volume VI, evidence 50, page 3537); statement made on August 30, 1996 by Alonso de Jesús Baquero-Agudelo before the Interim Office of the Delegate Regional Prosecutor for Human Rights [Despacho Provisional del Fiscal Regional Delegado ante los Derechos Humanos] (record of evidences to the application, volume I, evidence A9, page 119); interrogatory statement made by Jimmy Alberto Arenas-Robledo on December 19, 1996 before the National Directorate of Public Prosecutors' Offices of the National Human Rights Unit (record of evidences to the application, volume I, evidence A11, pages 134-143); statement made by Robinson Fortecha before the Second Court of Public Order of Pasto [Juzgado Segundo de Orden Público de Pasto] (record of evidences to the application, volume I, evidence A31, page 419) and further cited in the judgment of November 14, 1990 issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, page 516); statement made by Martín Emilio Sánchez Rodríguez before the National Office of the Procurator General (record of evidences to the application, volume II, evidence A65, page 993); and an affidavit made on January 22, 2007 by Federico Andreu-Guzmán (record of written statements and expert reports, volume III, pages 7516 and 7517).

[FN79] Cf. report of the Administrative Security Department (DAS) issued on March 15, 1989 (record of evidences to the application, volume II, evidence A35, page 607).

[FN80] Cf. expansion of interrogatory statement of August 3, 1995 rendered by Alonso de Jesús Baquero Agudelo before the Office of the Delegate Regional Prosecutor to the Technical Investigative Corps (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, pages 3492 and 3493); expansion of interrogatory statement of July 21, 1997 made by Alonso de Jesús Baquero Agudelo before the National Human Rights Unit (record of evidences to the application, volume I, evidence A17, page 195); expansion of interrogatory statement of March 1, 1996 rendered by Luis Alberto Arrieta Morales before the Delegate Prosecutor (record of evidences to the brief containing pleadings and motions, volume VI, evidence 56.1, page 3594); and affidavit made by Federico Andreu Guzmán on January 19, 2007 (record of witness statements and expert reports, volume III, pages 7513 and 7514).

[FN81] Cf. expansion of interrogatory statement of February 12, 1996 made by Alonso de Jesús Baquero Agudelo before the National Human Rights Unit (record of evidences to the brief containing pleadings and motions, volume VI, evidence 50, pages 3537 and 3539); and expansion of interrogatory statement of August 3, 1995 rendered by Alonso de Jesús Baquero Agudelo before the Office of the Delegate Regional Prosecutor to the Technical Investigative Corps (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, page 3493).
[FN82] Cf. report of the Administrative Security Department (DAS) of March 15, 1989 (record of evidences to the application, volume II, evidence A35, page 659).
[FN83] Cf. expansion of interrogatory statement of August 3, 1995 rendered by Alonso de Jesús Baquero Agudelo before the Office of the Delegate Regional Prosecutor to the Technical Investigative Corps (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, pages 3492 and 3493); and an affidavit of January 19, 2007 rendered by Federico Andreu Guzmán (record of witness statements and expert reports, volume III, page 7516).
[FN84] Cf. judgment issued on April 14, 1998 by the National Tribunal.
[FN85] Cf. report of the Administrative Security Department (DAS) issued on February 13, 1990 (record of evidences to the application, volume II, evidence A36, page 742).
[FN86] Cf. statement of August 29, 1995 made by Efrén Galeano López before the Regional Technical Investigative Corps of Cúcuta [Cuerpo Técnico de Investigación Regional Cúcuta] (record of evidences to the brief containing pleadings and motions, volume VI, evidence 48, pages 3500 and 3501); expansion of interrogatory statement of August 3, 1995 made by Alonso de Jesús Baquero Agudelo before the Office of the Delegate Regional Prosecutor to the Technical Investigative Corps (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, pages 3492 and 3493); and an affidavit rendered by Federico Andreu Guzmán on January 19, 2007 (record of witness statements and expert reports, volume III, pages 7512 to 7515).
[FN87] Cf. expert report rendered by expert Iván Cepeda Castro on January 16, 2007 (record of written statements and expert reports, volume II, page 7174).

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101. Based on the foregoing findings and taking into account the acknowledgement made by Colombia, the Court finds that, in the instant case, international responsibility is attributable to the State on the following grounds:

a) The State established a legal framework that promoted the creation of self-defense groups which were supported by State officials and which later became paramilitary groups. The State granted these groups the right to bear and possess arms, a right exclusively vested in the Armed Forces (supra para. 82 to 87);
b) The violations were committed at a time when such a legal framework was in force, though several years had passed since it became evident that self-defense groups had turned into paramilitary groups (supra para. 84 and 85);
c) The violations were committed within the framework of regulations and manuals for combat guerrillas. These regulations and manuals were adopted by the highest Military authority,

and, as part of a military members' duties, included "the military organization of civilians" in groups or self-defense committees and the control of such groups, whose duties would include patrolling and supporting the execution of combat and military intelligence operations (supra para. 88, 89, 96 and 97);

d) Members of the Army promoted the creation of the "Los Masetos" paramilitary group which carried out the Rochela Massacre, and provided them with support (supra para. 94 and 95);

e) The Army utilized members of the paramilitary group "Los Masetos" as guides, even to conduct joint patrol missions, and provided the group with military weapons (supra para. 95, 96, 97 and 100);

f) The State recognizes that the Rochela Massacre was carried out by members of the "Los Masetos" paramilitary group with the cooperation and acquiescence of State agents;

g) The State acknowledges that the members of the Judicial Commission were executed while they were conducting an investigation into crimes allegedly committed by paramilitary groups and members of the State's security forces in the region of Magdalena Medio;

h) The objective of the violations in this case was to execute the members of the Judicial Commission and take away or destroy the case files in relation to the investigations they were undertaking; and

i) The State recognizes that it incurred an omission regarding the protection of the Judicial Commission, which, as the Court noted, took place in a context of risk for judicial officers in the performance of their duties (supra para. 80).

102. The Court notes that in the instant case the State allowed the involvement and cooperation of private individuals in the performance of certain duties (such as the military patrol of public order areas, the employment of arms designed for the exclusive use of the armed forces or the performance of military intelligence activities), which, in general, are within the exclusive competence of the State and where the State has a special duty to act as a guarantor. Therefore, the State is directly responsible, either as a result of its acts or omissions, for all the activities undertaken by these private individuals in the performance of the foregoing duties, particularly if it is taken into consideration that private individuals are not subject to the strict control exercised over public officials regarding the performance of their duties. The situations in which private individuals cooperated in the performance of such duties reached such a magnitude that, when the State sought to adopt measures designed to address the lack of restraint in the actions undertaken by paramilitary groups, these groups themselves, with the support of State agents, attacked the judicial officers.

103. Finally, it should be highlighted that the events described in the instant case (infra para. 106 to 120) are particularly serious, as they were designed to thwart the investigation and punishment of gross violations of human rights, and in which the execution of the judicial officers was committed in the most inhuman manner. In addition, the Rochela Massacre had the grave consequence of intimidating the members of the Judiciary with regard to the investigation into this and other cases. [FN88]

[FN88] Cf. affidavit rendered by Antonio Suárez Niño on January 18, 2007 (record of written statements and expert reports, volume II, pages 7297 and 7298); affidavit rendered by Federico

Andreu Guzmán on January 19, 2007 (record of written statement and expert reports, volume III, pages 7509, 7510, 7517 and 7518); and testimony rendered by Virgilio Hernández Castellanos in the public hearing before the Inter-American Court held on January 31 and February 1, 2007.

VII. VIOLATION OF ARTICLES 7, 4, AND 5 (RIGHT TO PERSONAL LIBERTY, RIGHT TO LIFE, AND RIGHT TO PERSONAL INTEGRITY) IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

104. Without prejudice to the State's acknowledgment of responsibility for the violation of Articles 7, [FN89] 4, [FN90] and 5 [FN91] of the Convention (supra para. 13 and 33), and taking into account the gravity of the events that produced these violations, the Tribunal deems it necessary to make some specific findings with regard to the juridical consequences of these violations.

[FN89] The relevant parts of this Article state that:
Every person has the right to personal liberty and security.
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..
No one shall be subject to arbitrary arrest or imprisonment.
[FN90] The relevant parts of this Article establish that:
[e]very person has the right to have his personal 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.
[FN91] The relevant parts of this Article state 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.
[...]

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105. In light of the State's acquiescence and based on the evidence submitted to the Tribunal (supra para. 65) the Court will refer below to the way in which the events of the present case occurred.

106. On the morning of January 18, 1989 the fifteen members of the Judicial Commission traveled from the location of Barrancabermeja toward The Rochela in order to receive the statements of witnesses who had been summoned on the previous day. [FN92] Four of the investigating agents went to the area of Pueblo Nuevo in order to pick up several individuals who were to offer their statements in The Rochela. On the way, the agents were intercepted by a group of 15 heavily armed and uniformed men who pretended to be members of the XXIII Front of the FARC (the guerilla group "Armed Revolutionary Forces of Colombia" [Fuerzas Armadas Revolucionarias de Colombia]). The man who identified himself as the commander in charge of

the "Front" interrogated the members of the Judicial Commission, asking them the reason for their presence and how many people made up the Commission.

[FN92] During the two previous days these officials were in Barrancabermeja, heading toward the town of La Rochela to carry out actions related to the investigation and gathering of evidence. For example, these officials went to deliver citations to the people summoned to offer a statement and went to locate the Police Inspector of that locality.

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107. Once all of the officials of the Judicial Commission were in The Rochela and had nearly concluded receiving the witnesses' statements, a group of approximately forty armed men appeared; they pretended to be members of the abovementioned front of the FARC (supra para. 106). According to the Commission in its application, the same commander in charge addressed the members of the Judicial Commission and proposed that they hand over their officially registered revolvers, stating that it was with the purpose of avoiding confusion were they to meet members of the Army while they were moving from one place to another. On this subject, surviving victim Arturo Salgado stated at the public hearing that the armed men that "ambushed" the Judicial Commission members told them that they needed to talk with them, but that for that purpose they had to hand over their weapons, and so they had to do it. [FN93] Half an hour later several heavily armed men dressed as civilians arrived. One of them introduced himself as the highest commander in charge of the XXIII Front of the FARC.

[FN93] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1 of 2007.

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108. It has been proven that the man who said he was the leader of the FARC was really Alonso de Jesús Baquero Agudelo, one of the leaders of the paramilitary group called "Los Masetos" (supra para. 74). It has also been acknowledged and proven that the armed men that impersonated members of the FARC belonged to this paramilitary group.

109. It is important to point out that the circumstances of deceit, the vast number of paramilitary members present in comparison to the small numbers of the Judicial Commission, and the amount and grade of weaponry that the paramilitary carried made it impossible for the members of the Judicial Commission to raise any resistance.

110. Subsequently, the members of the "Los Masetos" paramilitary group kept the members of the Judicial Commission locked up and guarded in a room of about twelve square meters for approximately two and a half hours. [FN94] With regard to these circumstances, which the 15 victims endured during the hours prior to the massacre, Mr. Arturo Salgado Garzón, a surviving victim, stated before the Court [FN95] that during the time they were detained "we were all shut up, nobody spoke a word." He also emphasized the number of armed men who "ambushed" and guarded them and the weapons they carried. Moreover, he indicated that the abovementioned

leader of the paramilitary group asked them about the status of the 19 Tradesmen of Ocaña case, which was in fact one of the cases that the Judicial Commission was investigating.

[FN94] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1, 2007; and testimonial statement of Arturo Salgado Garzón of January 19, 1989 before the Fourth Judge of Public Order [Juez Cuarto de Orden Público] (record of evidences to the brief containing pleadings and motions, volume V, page 3366).

[FN95] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1, 2007.

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111. The two men impersonating FARC commanders met with the judicial officials and told them that since certain military movements were being carried out in the area, it was necessary to find a safe place for the Judicial Commission to continue its work. Afterwards, the commanders convinced the members of the Judicial Commission that it would be necessary to tie them up during their transfer, in order to simulate a situation of kidnapping by the FARC in case the Army was to appear.

112. It was approximately 12:00 hours when the 15 members of the Judicial Commission were tied with their hands behind their backs and forced to get into the two vehicles. The paramilitaries traveled in two other vehicles. Unaware of their destination, the members of the Judicial Commission were driven for approximately three kilometers towards Barrancabermeja, until they reached the place known as "La Laguna". When the vehicles stopped, the armed men got out. Mr. Manuel Libardo Díaz Navas, a surviving victim, testified in the domestic fora that "we all felt that something bad was going to happen." [FN96] The armed came into formation at an approximate distance of ten meters from the vehicles and, following a signal from one of them, began to shoot indiscriminately and continuously at the members of the Judicial Commission for several minutes [FN97].

[FN96] Cf. testimonial statement offered by Manuel Libardo Díaz Navas on January 21, 1989 before the Fourth Court of Public Order of Bogotá [Juzgado Cuarto de Orden Público de Bogotá] (record of evidences to the application, evidence A2).

[FN97] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1, 2007.

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113. Later, the paramilitaries began to give each victim the "finishing shot". This lasted approximately a minute and a half. [FN98] According to the testimony of surviving victim Arturo Salgado, he survived because the bullet grazed a side of his head; however, he stated that "I thought I had died." He also received a bullet in the buttocks. Later, the paramilitaries moved the car in which Mr. Arturo Salgado was located, trying to turn it over. Some victims were taken out of the other vehicle and were thrown one on top of the others. [FN99]

[FN98] Cf. supra note 97.
[FN99] Cf. supra note 97.

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114. With regard to the two other surviving victims, Manuel Libardo Díaz Navas had received several bullet wounds and was covered with blood. The paramilitaries took him from the vehicle, threw him on the ground face down, and cut the ropes that were used to tie his hands. He held his breath for a while, listening as they finished executing those that "in any way showed signs of life." [FN100] For his part, Wilson Humberto Mantilla survived because the paramilitaries believed he was dead, since the brains of one of his colleagues had fallen on his head. [FN101]

[FN100] Cf. testimonial statement offered by Manuel Libardo Díaz Navas on January 21, 1989 before the Fourth Court of Public Order of Bogotá (record of evidences to the application, volume I, evidence A2, pages 37 and 38).
[FN101] Cf. supra note 97.

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115. Before leaving, the paramilitaries wrote "be gone MAS, be gone paramilitaries" [Fuera el MAS, fuera los paramilitares] on the exterior surface of the vehicles in order to ensure that the massacre be attributed to the guerrilla groups. Before leaving, they took twenty-three of the twenty-five case files the Judicial Commission had been carrying.

116. Only three members of the Judicial Commission survived the massacre, "[d]ue to unforeseeable circumstances, thanks to luck." [FN102] Despite the great tribulations of the events they had endured but to which their colleagues had succumbed and the physical suffering caused by their injuries, the three survivors were able to start one of the vehicles and flee the area of the massacre until the vehicle broke down after they had driven for approximately three kilometers toward Barrancabermeja. Survivors Manuel Libardo Díaz Navas and Wilson Humberto Mantilla managed to escape and ask for help from individuals passing in a soda delivery truck near the area where their vehicle had stopped. However, survivor Arturo Salgado Garzón, who had been wounded with a bullet in his buttocks and head, stayed in the area and waited for help. [FN103]

[FN102] Cf. judgment of November 14, 1990 issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, page 451).
[FN103] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1, 2007.

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117. As stated by Mr. Salgado, he remained alone, tied up, and injured for five hours, hiding near the scene of the massacre, waiting for help. During that time, he was afraid that "they would suddenly return to kill [him] again." At approximately 17:00 hours, journalists from the "Vanguardia Liberal" arrived and helped him to a clinic. No security forces arrived to provide

help, despite the fact that there was a military station about fifteen minutes away and another about forty minutes away. [FN104]

[FN104] Cf. supra note 103.

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118. In fact, after these events, the State did not guarantee adequate medical assistance to Mr. Salgado Garzón for his injuries. In the clinic they even left a piece of the bullet in his buttocks. [FN105]

[FN105] Cf. supra note 103.

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119. After the massacre, the three surviving victims had to live for three months in an apartment provided by the Office of Criminal Proceedings [Dirección de Instrucción Criminal] under surveillance, since they could not go home due to security reasons. Due to the threats they received, the Director of Criminal Proceedings decided to send them to different cities in Colombia. [FN106]

[FN106] Cf. supra note 103.

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120. Victim Arturo Salgado Garzón [FN107] stated that it was a time in which he had "very little" contact with his family, who also had to leave their home. Afterwards he was sent to Spain for a year. According to Mr. Salgado Garzón, these events and circumstances "change[d his] life completely." Likewise, he testified that the State kept him in "terrible" economic circumstances, because he had to confront this situation with only his salary.

[FN107] Cf. supra note 103.

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121. Having determined the facts which constituted the violations acknowledged by the State, this Court turns to its analysis and findings regarding their legal consequences.

A) Violation of personal liberty

122. As revealed by the facts established and acknowledged by Colombia, the 15 officials that made up the Judicial Commission were illegally and arbitrarily detained for hours under the control of members of the "Los Masetos" paramilitary group. In addition, and in the circumstances described, they were forced to hand over their weapons, tied up and put in

vehicles, which prevented any possibility that the protections enshrined in Article 7 of the Convention would operate in their favor.

B) Violation of the right of life

123. With regard to the violation of Article 4 of the Convention, in accordance with the abovementioned findings (supra para. 101) and the acknowledgment of responsibility made by the State, the State is responsible for the death of the 12 Judicial Commission officials, which occurred during the massacre of January 18, 1989. With regard to the 3 surviving officials, the State also acquiesced to the representatives' request that it be declared that the State violated Article 4 of the Convention to the detriment of these individuals.

124. This Court finds that in the present case there are extraordinary circumstances that lay a foundation for a violation of Article 4 of the Convention and its analysis with regard to the three survivors of the massacre, taking into account the force employed, the intent and objective of the use of this force, and the situation in which the victims found themselves.

125. It has been established that the intention of the perpetrators of the massacre was to execute the members of the Judicial Commission. Likewise, the facts show that the perpetrators did everything they considered necessary to fulfill this objective. On this issue, the State itself stated that "given the magnitude of the attack, the truth is that the intention of these outlaws could not be any other than to cause [the] immediate death" of the three surviving victims. In this sense, the Second Court of Public Order stated:

[a] few kilometers ahead, in the area called La Laguna, on the road that leads to Barrancabermeja, the vehicles suddenly stopped, and the members of the armed group got out without saying a word, and making gala of an incomprehensible coldness, indiscriminately started shooting at the vehicles with their weapons (galil r 15, 9mm guns [etc.]), with which they did not have any obstacle in fatally injuring the occupants. [FN108]

[FN108] Second Court of Public Order of Pasto, Judgment of June 29, 1990 (record of evidences to the application, evidence A31, pages 372 and 373).

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126. It is important to note that the European Court of Human Rights has declared the violation of the right to life of individuals who did not die as a consequence of the violating acts. In the case of Acar and Others v. Turkey, [FN109] armed municipal guards stopped two vehicles, took out their 15 occupants, ordered them to form a line on the road, and shot them. Six of them died and nine were injured. The European Court found that they were victims of a behavior that, due to its nature, represented a serious risk to their lives despite the fact that they survived the attack. Likewise, in the case of Makaratzis v. Greece the European Court stated that:

…the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in

inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention…
In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that, irrespective of whether or not the police actually intended to kill him, the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 is thus applicable in the instant case. [FN110]

[FN109] Cf. Eur.C.H.R., Acar et al. v. Turkey, Judgment of May 24, 2005, App. No. 36088/97 and 38417/97, para. 77.
[FN110] Cf. Eur.C.H.R., Makaratzis v. Greece [GC], Judgment of December 20, 2004, App. No. 50385/99, para. 51 and 55. The Spanish version of this opinion uses a translation by the Secretariat of the Court. The above is the original.
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127. This legal analysis applies to the present case. The perpetrators of the massacre made sure that the members of the Judicial Commission were in a state of complete defenselessness, by tying them up and locking them in two vehicles, such that they could proceed in a surprising manner to shoot indiscriminately for minutes. In case any of them had not died, they gave the "finishing shots". The manner in which the massacre was executed through an attack with firearms of the indicated magnitude, leaving the victims without any possibility of escape, constituted a threat to the life of all the 15 members of the Judicial Commission. The fact that three of them were only injured and not killed is merely fortuitous. As indicated by surviving victim Arturo Salgado, the paramilitaries said "lets go; they're all dead," before leaving the place of the massacre. [FN111]

[FN111] Cf. testimonial statement offered by Arturo Salgado Garzón before the Inter-American Court during the public hearing held on January 31 and February 1, 2007.
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128. For these reasons, the Court finds that the right to life enshrined in Article 4 of the American Convention also applies with regard to the three survivors.

C.1) Violation of the right to personal integrity of the members of the Judicial Commission

129. In accordance with the State's admissions, its partial acknowledgement of responsibility, this Tribunal's findings with regard to the events prior to the execution of the members of the Judicial Commission, and the circumstances endured by the three survivors, the three survivors suffered physical, mental, and moral suffering which violated their right to personal integrity under Article 5 of the American Convention. The representatives alleged that these acts should be recognized as psychological torture.

130. With regard to the treatment endured by the 15 members of the Judicial Commission during the hours of detention before and during the massacre, the representatives alleged that these events should be recognized as psychological torture based on the following elements: the

circumstances the victims endured prior to their deaths; the long desperate moments the survivors endured in their efforts to save their own lives; the magnitude of the violence used throughout the operation; and the victims' suffering due to the genuine threat of receiving physical injuries. Likewise, they stated that the severity of the events, the vulnerability in which the victims found themselves, and the extreme violence used, allow an inference that the suffering was severe. Moreover, the representatives made reference to the "intentional nature of the detention."

131. With regard to the suffering of the three survivors after the massacre, the representatives pointed out the seriousness of the acts done to them. Consequently, the representatives considered that the psychological torture was even more intense in the case of the three survivors since "after enduring the incessant and indiscriminate gunshots by the paramilitaries and believing that they were about to die, the survivors emerged injured but miraculously alive." The representatives also indicated that after the massacre they had to wait motionless in fear of the paramilitaries' return. The representatives stated that all of these events should be considered "circumstances of extreme psychological vulnerability."

132. The Court recalls that International Law strictly prohibits torture, cruel, inhuman, or degrading treatment or punishment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of international jus cogens. This prohibition holds under any circumstances. [FN112]

[FN112] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 271; Case of Baldeón García. Judgment of April 6, 2006. Series C No. 147, para. 117; and Case of García Asto and Ramírez Rojas. Judgment of November 25, 2005. Series C No. 137, para. 222.

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133. The Court will now analyze the aforementioned arguments by the representatives in the context of Article 5.2 of the American Convention, taking into account developments in the Court's own jurisprudence, as well as the provisions of Article 2 of the Inter-American Convention to Prevent and Punish Torture and other pertinent international instruments.

134. With regard to the treatment endured by the 15 members of the Judicial Commission, the Court stresses that the massacre was not executed immediately after their detention. Rather, the victims were detained for approximately three hours, during which they were subjected to intense suffering as a result of threats, intimidation, and deception by a paramilitary group much stronger than them in numbers as well as weaponry. They were forced to hand over the few weapons they carried, and were held captive under watch for hours. In these circumstances, they were interrogated about the judicial investigation they were undertaking. They were tied with their hands behind their backs, forced to board two vehicles, and were taken approximately three kilometers away, during which time they were unaware of their fate (supra para. 107 to 112).

135. With regard to the suffering endured by the three survivors during and after the massacre, the Court notes that, during the executions, these individuals endured additional circumstances of intense psychological suffering, as well as physical injuries, given that they had just survived a

violent attack with bursts of gunfire and, later, the final fatal shots. Moreover, they were present during the suffering and death of their friends and colleagues, and felt the possibility that they might die in those moments as well. They even had to feign their own death in order to survive. Likewise, after the massacre, surviving victim Arturo Salgado had to endure five hours of great fear and anxiety when he found himself alone, knowing that the paramilitaries could return at any moment and execute him. At the same time, the gunshot wounds he suffered went without medical attention, and he was unable to go for help. These circumstances constituted additional physical and psychological suffering, and compounded the suffering he had already endured during the hours of detention and the massacre.

136. The Court finds that the events of the present case demonstrate that this combination of acts caused grave suffering for the members of the Judicial Commission in an environment of uncertainty about what was to become of them, and profound fear that they would be deprived of their lives in a violent and arbitrary manner, which, in effect, is what happened to most of them. The Court further finds that these acts constitute a grave violation of the right to personal integrity under Article 5(1) and 5(2) of the American Convention.

C.2) Violation of the right to personal integrity of the victims' next of kin

137. In addition, with regard to the violation of Article 5 of the Convention to detriment of the next of kin of the victims, the Court recalls that the next of kin of victims of certain violations of human rights may be, at the same time, victims of violations. [FN113] On this issue, the Court has found that the right of the victims' next of kin to mental and moral integrity may be violated as a result of the particular circumstances of the violations perpetrated against their loved ones and due to the subsequent actions or omissions of the State authorities with regard to these events. [FN114]

[FN113] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 335; Case of Vargas Areco, supra note 8, para. 83; Case of Goiburú et al., supra note 11, para. 96.
[FN114] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 335; Case of Vargas Areco, supra note 8, para. 96; Case of Goiburú et al., supra note 11, para. 96.

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138. In its application, the Commission requested that the Court declare Colombia responsible for the violation of Article 5(2) of the Convention to the detriment of "the next of kin of the deceased victims", "in light of the way in which their loved ones were executed as well as the fact that the truth of the events has not been duly judicially clarified in an exhaustive manner." Likewise, it stated that "[d]ue to the characteristics of the present case, it may be inferred that the next of kin of the victims have suffered an infringement of their right to not be submitted to inhuman treatment." On this issue, the representatives concurred in the Commission's request, but added that the violation of Article 5(2) should also be declared to the detriment of the surviving victims' next of kin. In their brief containing pleadings and motions they included the wife, children, and siblings of surviving victim Arturo Salgado Garzón in their list of next of kin to be considered victims. They further added that "[t]he suffering of the victims' next of kin has been aggravated since they had to confront the reality that their loved ones, all of whom were

Colombian State officials, died or were injured as a result of the acts and omissions of their government."

139. As was indicated above (supra para. 48), the Court granted full effect to the State's acknowledgment of responsibility for the violation of Article 5 "with regard to victims' next of kin" who were identified by the Commission in its application and by the representatives in the brief containing pleadings and motions, which includes the next of kin of the 12 deceased victims, as well as the next of kin of surviving victim Arturo Salgado Garzón.

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140. Based on the foregoing considerations, as well as the State's acknowledgment of responsibility and the grounds presented in the section on the International Responsibility of the State (supra para. 101), the Court finds that Colombia violated the rights to personal liberty, personal integrity, and life, enshrined respectively in Articles 7, 5(1) and 5(2) and 4 of the American Convention, in relation to Article 1(1) of the same, to the detriment of Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla, and Manuel Libardo Díaz Navas.

141. Moreover, based on the foregoing considerations, as well as the acknowledgment of responsibility made by the State and the grounds presented in the section on International Responsibility (supra para. 66), the Court finds that Colombia violated the right to personal integrity, enshrined in Article 5 of the American Convention, in relation to Article 1(1) of the same, to the detriment of the deceased victims' next of kin and the next of kin of surviving victim Arturo Salgado Garzón, who are identified in the Appendix of victims of the present Judgment which for this purpose is considered part of the Judgment.

VIII. ARTICLES 8(1) AND 25 (JUDICIAL GUARANTEES AND JUDICIAL PROTECTION) IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION [FN115]

[FN115] Article 8(1) of the Convention Americana establishes that "[e]very 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."
Article 25 of the Convention stipulates:
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.

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142. In the years following the massacre, judicial proceedings have been held in relation to the events of the present case. These proceedings were held in the ordinary criminal courts, the military criminal courts, disciplinary courts, and contentious administrative courts. The Commission argues that the State has violated Articles 8, 25 and 1(1) of the Convention, because "to a large extent, impunity reigns" with regard to the Rochela Massacre. The representatives concur with the Commission and add that the ineffectiveness of the proceedings and the de facto and de jure obstacles in the determination of the truth of the events, as well as in the corresponding investigation, prosecution and punishment of those responsible also constitute a violation of Articles 2 and 13 [FN116] of the Convention.

[FN116] As for the right to know the truth, the representatives allege that "in this specific case", Article 13 of the American Convention has also been infringed, given that the State fails to comply with "the duty to produce [and provide] certain relevant information" about serious human rights violations, which is necessary "in order to prevent their repetition."

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143. First, the Court deems it important to emphasize that, upon partially acknowledging its responsibility for the violation of Articles 8, 25 and 1(1) of the Convention, the State itself accepted that the "absence of legal effectiveness" was reflected, inter alia, by the fact that: (i) judicial proceedings have gone on for more than 17 years and some of these proceedings have not reached a final conclusion that would allow for the whole truth of the events to be known; (ii) not all those involved in the massacre have been punished; (iii) for long periods there was no procedural activity, and (iv) "legal and procedural problems have arisen from mechanisms such as the statute of limitations and res judicata with regards to continuing the investigations." At the same time, the State insisted that it is only partially responsible because "judicial proceedings to punish the material and intellectual authors are still pending" and because it disputes certain assertions made by the Commission and the representatives.

144. Taking into account that the State's acknowledgement is "partial" and that there are still elements in dispute between the parties, the Court will now set forth the findings it deems necessary with regard to the alleged violations.

145. The Court has maintained that, according to the American Convention, the States Parties are obliged to provide effective judicial recourses to the victims of human rights violations (Article 25), and that this recourse must be provided in conformity with due process of law (Article 8(1)). Both of these obligations fall within the general State obligation to guarantee the free and full exercise of the rights recognized by the Convention to all those within their jurisdiction (Article 1(1)). [FN117]

[FN117] Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 106; Case of Goiburú et al., supra note 11, para. 110; and Case of Claude Reyes et al., supra note 27, para. 127.

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146. This Court has indicated that the right to judicial access must secure the right of the alleged victims or their next of kin to have every measure taken such that the truth of the events may be known within a reasonable time and that those eventually found responsible be punished. [FN118]

[FN118] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 382; Case of Vargas Areco, supra note 8, para. 101; and Case of the Ituango Massacres, supra note 15, para. 289.

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147. With regard to the violation of Article 13 of the American Convention alleged by the representatives, the Court notes that the right to truth is subsumed within Articles 8 and 25 of the Convention. These Articles provide the right of the victim or his or her next of kin to obtain a State determination of the truth of the events and the corresponding responsibility through an investigation and trial. [FN119]

[FN119] Cf. Case of Almonacid-Arellano et al., supra note 16, para. 148; Case of Blanco Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 62; and Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 78.

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148. Upon implementing or tolerating acts directed toward the perpetration of extrajudicial executions, or by failing to investigate or punish those responsible, the State violates the obligation to respect and ensure the full and free exercise of the rights of the alleged victims or their next of kin as recognized in the Convention. In addition, these violations prevent society from knowing the truth of the events, [FN120] encourage the chronic repetition of human rights violations and perpetuate the total defenselessness of the victims and their next of kin. [FN121] The investigation into the events must be conducted using all available legal means, in order to determine the truth of what occurred and in order to pursue, capture, prosecute, and convict all the material and immaterial authors, particularly when State agents are or could be involved. [FN122]

[FN120] Cf. Case of the Ituango Massacres, supra note 15, para. 300; Case of the Pueblo Bello Massacre, supra note 12, para. 146; and Case of the Mapiripán Massacre, supra note 12, para. 238.

[FN121] Cf. Case of Baldeón García, supra note 112, para. 168; Case of the Pueblo Bello Massacre, supra note 12, para. 266; and Case of Gómez Palomino, supra note 119, para. 76.

[FN122] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 256; Case of Almonacid Arellano et al., supra note 16, para. 111; and Case of Goiburú et al., supra note 11, para. 117.

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149. The Court finds it necessary to emphasize that the investigation into the violations perpetrated in this case should have been conducted with the most rigorous due diligence. This diligence was required not only because the investigation related to a massacre, but also owing to the seriousness of the fact that this massacre was directed at judicial officials in the course of their work, and was aimed at affecting their investigation of grave violations in which members of paramilitary groups and senior military commanders had participated. At the same time, the massacre represented a clear and threatening message that this type of crime should not be investigated.

150. With the foregoing in mind, in this section the Court will examine whether the proceedings have been conducted with due diligence, whether they have respected judicial guarantees, and whether they have constituted an effective recourse to ensure the rights to judicial access, to know the truth of the events, and the right to reparations for the next of kin.

a) Proceedings in the ordinary criminal courts

151. The Commission and the representatives argue that, to a large extent, impunity reigns in relation to the Rochela Massacre because all those who took part in it have not been prosecuted and punished. In this regard, the State indicated that "according to the investigations in the ordinary jurisdiction, more than 100 persons initially thought to be related to the massacre did not have a direct connection with the events but rather were connected to the paramilitary phenomenon as a whole" and that "[c]onsequently, the assertions that all these individuals should all be prosecuted and punished for the events of 'The Rochela' are erroneous."

152. The Court will first provide a general overview of the proceedings filed in the ordinary criminal courts during the past 18 years that have elapsed since the massacre occurred and note the results of these proceedings, before examining their effectiveness.

153. The Court finds it necessary to include some general information about the development of the investigations:

(a) between January 1989 and November 1990 the investigations took place initially within a Commission composed of the criminal courts of first instance of Barrancabermeja, Bucaramanga and Bogotá; however, due to death threats against the judges in charge of the case, the investigations were transferred to the Second Court of Public Order of Pasto. During this stage, judgments of the first and second instance were delivered in June and November 1990 with regard to 28 of the accused. In these judgments convictions, acquittals and nullifications were ordered; [FN123]
(b) between November 1990 and November 1996 some procedural activity occurred, but none of it was related to furthering the investigations; [FN124]

(c) between 1996 and 2003 the investigations were directed by various divisions of the Office of the National Attorney General, particularly the National Human Rights Unit, the Terrorism Unit, the Office of the Delegated Prosecutor for the Armed Forces, the Delegated Prosecutor's Unit for the Specialized Circuit Courts and the Office of the Delegated Prosecutor for the National Technical Investigative Unit. During this stage, judgments were delivered by the Criminal Circuit Court of San Gil (Santander) and the First Criminal Circuit Court of Bucaramanga in January 2001 and May 2003, respectively. These courts convicted one of the accused and declared that the statute of limitations had run with regard to another; [FN125]

(d) in February 2003 the National Human Rights and International Humanitarian Law Unit received the file. [FN126] This stage continues under the authority of the Office of the Fourteenth Specialized Prosecutor and the action remains in preliminary proceedings. During this stage, several judicial orders have been issued, including an indictment. [FN127] Moreover, procedural actions remain pending with regard to, inter alia, "the determination of the possible responsibility of the National Police and the National Army for the events" and the definition of the charges against eight of those indicted. [FN128]

[FN123] Cf. judgment of June 29, 1990, delivered by the Second Court of Public Order of Pasto (record of evidences to the application, evidence A31, pages 441 to 443); and judgment of November 14, 1990, delivered by the Sentencing Chamber of the Superior Tribunal of Public Order [Sala de Decisión del Tribunal Superior de Orden Público] (record of evidences to the application, evidence A32, pages 489 to 503 and 523 to 525).

[FN124] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4578).

[FN125] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (file of attachments to the State's reply brief, volume I, attachment 1, pages 4578 and 4579); and judgment of May 23, 2003 issued by the First Criminal Court of the Specialized Circuit of Bucaramanga (record of the merits, possible reparations, and costs, volume V, pages 1953 and 1954).

[FN126] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4580).

[FN127] Cf. resolution of March 21, 2006 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume II, evidence 3U).

[FN128] Cf. statement of Héctor Cruz Carvajal made before notary public (affidavit) on January 19, 2007 (record of witness statements and expert reports, volume III, page 7559). In this statement the witness affirmed that Iván Roberto Duque Gaviria and Ramón María Isaza Arango provided testimony in the criminal proceedings corresponding to the La Rochela massacre.

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154. Regarding the results achieved in these 18 years of investigations and proceedings, it is pertinent to point out that:

(a) A total of 41 individuals have been prosecuted; [FN129]

(b) Of the 41 individuals who have been prosecuted, eight have been convicted. Of the eight persons convicted, only one of them was a State agent, and he was a member of the Army with the rank of sergeant. Seven of the eight individuals were convicted in a judgment of November 1990 (supra para. 153.a). The eighth individual was convicted in a judgment of May 2003 (supra para. 153.c). Regarding the crimes for which these individuals were convicted and the punishments imposed, three of these individuals [FN130] were sentenced to 29 and 30 years' imprisonment for, inter alia, homicide, kidnapping and conspiracy; four individuals [FN131] were sentenced to 11 and 14 years' imprisonment for conspiracy, and one individual [FN132] was sentenced to one year's detention for concealment;

(c) These eight individuals were effectively deprived of their liberty. [FN133]

(d) Of the 41 persons who have been prosecuted, 13 of them were acquitted in a judgment of the first instance in 1990; [FN134] the Office of the Attorney General precluded the investigation entirely with regard to three individuals in 1999 and 2006; [FN135] in 1997, the Office of the Attorney General issued an exculpatory order [resolución inhibitoria] with regard to one former congressman accused of planning the massacre [FN136] and, in 2001, a court declared that the criminal prosecution of one of the individuals had been extinguished because the accused had died. [FN137]

(e) In the criminal proceedings currently underway, charges have been brought against three persons [FN138] and the charges have yet to be defined against eight individuals; [FN139]

(f) At least two arrest warrants are pending execution (infra para. 173); and

(g) In addition to the sergeant who was sentenced to one year's detention for the crime of concealment (supra para. 154.b), only two members of the armed forces have been placed under investigation in the ordinary criminal proceedings: a retired major and a lieutenant [FN140] are currently under investigation for conspiracy. With regard to the major [FN141] in 1998 an investigation into his responsibility as an accomplice to aggravated homicide was precluded, but an investigation was ordered into his responsibility for the crime of conspiracy. [FN142] The lieutenant was initially acquitted of "several crimes of homicide, abduction, larceny" but an investigation was ordered into his responsibility for conspiracy. [FN143] This investigation began in 2007. [FN144]

[FN129] Cf. judgment of June 29, 1990 issued by the Second Court of Public Order of Pasto (record of evidences to the application, evidence A31, pages 442 and 443); judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, evidence A32); resolution No. 125 of November 5, 1996 issued by the National Human Rights Unit of the Office of the Attorney General (record of evidences to the State's reply brief, volume I, evidence 3J, pages 4809 to 4811); Report by the National Human Rights and International Humanitarian Law Unit of August 25, 2006 (record of evidences to the State's reply brief, volume I, evidence 1, pages 4572 to 4582 and 4603 to 4608); resolution of January 19, 2007 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's written closing arguments, volume II, pages 8015 and 8018). When referring to persons who were prosecuted, the Court only takes into account those individuals who have been identified and officially tied to the events of the La Rochela massacre. In addition to these persons who have been prosecuted, an attempt was made to tie approximately 100 persons to the criminal proceedings (infra para. 163).

[FN130] Alonso de Jesús Baquero Agudelo, Julián Jaimes and Marceliano Panesso Ocampo, who were members of a paramilitary group. Marceliano Panesso Ocampo was the only ACDEGAM leader convicted for the events at issue in this case. Cf. judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, volume I, evidence A32, page 522); and judgment of May 23, 2003 issued by the First Criminal Court of the Specialized Circuit of Bucaramanga (record of the merits, possible reparations, and costs, volume V, pages 1953 and 1954).
[FN131] Héctor Rivera Jaimes, Ricardo Ríos Avendaño, Jesús Emilio Jácome and Germán Vergara García, who were members of a paramilitary group. Cf. judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, volume I, evidence A32, page 523)
[FN132] Sergeant First Class Otoniel Hernández Arciniegas. Cf. judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, volume I, evidence A32, page 523)
[FN133] With regard to Ricardo Antonio Ríos Avendaño, the representatives alleged that this individual "fled and was not captured until 2005, according to press reports".
[FN134] Gilberto Ayala Buenahora, Alvaro Arturo Balcazar Mina, Flower Balcazar Mina, Luis Alfonso Gonzalez Avendaño, Robinson Robles Diaz, Jorge Enrique Moreno, Rafael Enrique Estrada, Indalecio Murillo, Luis Calderon Santana, Eduardo Solano Vasquez, Maria Deysi Tangarife Rodríguez, Nelson Mendez Acero, Marina Jaimes Rodríguez and Orlando Novoa Enciso . Cf. judgment of June 29, 1990 issued by the Second Court of Public Order of Pasto (record of evidences to the application, volume I, evidence A31, pages 442 and 443); and judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, volume I, evidence A32, page 524).
[FN135] Cf. resolution of January 7, 1999, issued by the Terrorism Unit of the Office of the Bogotá Regional Prosecutor precluding the investigation against Luis Alberto Arrieta Morales (record of evidences to the application, volume I, evidence A30, pages 362, 363); resolution of March 21, 2006, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit precluding the investigation against Waldo Patiño García (record of evidences to the State's reply brief, volume II, evidence 3U, pages 5026, 5039 and 5041) and resolution of July 31, 2006, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit precluding the investigation against Robinson Gutiérrez de la Cruz (record of evidences to the State's reply brief, volume II, evidence 3V, page 5062).
[FN136] Tiberio Vilareal Ramos. Cf. resolution of December 30, 1997, issued by the Delegate Prosecutor to the Supreme Court of Justice (record of evidences to the application, evidence A28, pages 302-308).
[FN137] Nelson Lesmes Leguizamón. Cf. resolution of June 30, 2005, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit, outlining the decision adopted on January 10, 2001, by the Criminal Circuit Court of San Gil (record of evidences to the brief containing pleadings and motions, volume VI, evidence 56.4, page 3623).
[FN138] Lanfor Miguel Osuna Gómez, Jairo Iván Galvis Brochero and Gilberto Silva Cortés. Cf. resolution of March 21, 2006 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume II, evidence 3U, page 5040).

[FN139] Norberto de Jesús Martínez Sierra, Rafael Pombo Cataño, Anselmo Martínez, Robinson Fontecha Vera, Wilson Cardona Camacho, Oscar Moreno Rivera, Jesús Antonio Cárdenas and Luis Enrique Andrade Ortiz. Cf. resolution of July 14, 2005 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 3R, pages 4962 and 4963); report of August 25, 2006 issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4608); affidavit given by Héctor Cruz Carvajal on January 19, 2007 (record of witness statements and expert reports, volume III, page 7559); and resolution of January 19, 2007 issued by the Office of the 14th Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit (record of evidences to the written closing arguments submitted by the State, volume II, evidence 1D, page 8018).
[FN140] Cf. Retired Major Oscar de Jesús Echandía. Although his retirement occurred one month after the date of the massacre, he was charged for acts which committed while he was a part of the State security forces. Cf. Charges issued on September 12, 1997 by the Office of the Delegated Regional Prosecutor of the National Human Rights Unit (record of evidences to the application, volume I, evidence A27, pages 285 and 286).
[FN141] Cf. preclusion resolution issued by the Office of the Delegated Regional Prosecutor of the National Tribunal (record of evidences to the application, volume I, evidence A29, pages 315 and 317).
[FN142] Cf. resolution of September 16, 2005 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the written closing arguments submitted by the State, volume IV, evidence 56, pages 3585 and 3590).
[FN143] Lieutenant Luís Enrique Andrade Ortiz. Cf. judgment of November 14, 1990 issued by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, volume I, evidence A32, page 503).
[FN144] Cf. resolution of January 19, 2007 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the written closing arguments submitted by the State, volume II, pages 8015 and 8018).

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Lack of due diligence in the investigations

155. The Court finds that, upon an analysis of the lack of due diligence exercised by those who conducted the official investigations, the ineffectiveness of these criminal proceedings is clearly demonstrated. This lack of due diligence is manifested in the unreasonable length of the proceedings; the failure to adopt the necessary measures to protect against the threats which arose during the investigations; the delays, obstacles and obstructions which arose during the proceedings, and the grave omissions in the development of logical lines of investigation.

156. The focal point of analysis of whether the proceedings in this case were effective is whether they complied with the obligation to investigate with due diligence. This obligation

requires that the body investigating a violation of human rights use all available means to carry out all such steps and inquiries as are necessary to achieve the goal pursued within a reasonable time. [FN145] The obligation to employ due diligence is particularly stringent and important in the face of the seriousness of the crimes committed and the nature of the rights violated. [FN146] In this sense, all necessary measures must be adopted in order to prevent the systematic patterns that led to the commission of serious human rights violations.

[FN145] Cf. Case of Gómez-Palomino, supra note 119, para. 80; and Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 83.
[FN146] Cf. Case of La Cantuta, supra note 8, para. 157; Case of Goiburú et al., supra note 11, para. 84; and Case of Almonacid Arellano et al., supra note 16, para. 99 and 111.

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157. In order to examine the diligence employed in the identification of all those responsible for the massacre of The Rochela, the Court deems it important to take into account the factors indicated (supra para. 90, 91, 99, 102, 109, and 111) with regard to: the number of individuals who participated in the massacre, the collaboration and acquiescence of state agents, the motive of the massacre, the direct relationship between the "Los Masetos" paramilitary group and the ACDEGAM paramilitary group and their links to senior commanders of security forces in the area, as well as the fact that during the investigations into the Rochela Massacre, Army personnel obstructed the capture of some individuals (supra para. 172 to 175).

158. In context of the facts of the present case, the principles of due diligence required that the proceedings be carried out taking into account the complexity of the facts, the context in which they occurred [FN147] and the systematic patterns that explain why the events occurred. In addition, the proceedings should have ensured that there were no omissions in gathering evidence or in the development of logical lines of investigation. Thus, the judicial authorities should have borne in mind the factors indicated in the preceding paragraph that denote a complex structure of individuals involved in the planning and execution of the crime, which entailed the direct participation of many individuals and the support or collaboration of others, including State agents. This organizational structure existed before the crime and persisted after it had been perpetrated, because the individuals who belong to it share common goals.

[FN147] Cf. Case of the Serrano Cruz Sisters, supra note 145, para. 88 and 105.

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159. According to the results of the investigations into the massacre, which have been described above (supra para. 154), it should be noted that, during 18 years of investigations and proceedings, only six members of the "Los Masetos" paramilitary group, one leader of the ACDEGAM paramilitary group and one soldier (who was a sergeant) have been convicted. Despite the fact that this soldier was identified as a collaborator with the "Los Masetos" paramilitary group, he was only sentenced to one year's detention for concealment with regard to information regarding paramilitary member Julián Jaimes.

160. The Court observes that the Office of the Attorney General received various statements that point to the participation of senior military leaders and other State agents in the events surrounding the Rochela Massacre. These included the statements made from 1995 to 1998 [FN148] by the well-known member of the paramilitary forces, Alonso de Jesús Baquero Agudelo, who was convicted for the homicide of the judicial officials in 1990 (supra 154.b). In a resolution of September 12, 1997, the Office of the Delegate Regional Prosecutor of the National Human Rights Unit summarized the pertinent parts of these statements, in which the witness described "not only the motives for this atrocious act, but also the creation and evolution of the criminal organization to which the hired assassins or material authors belonged, and also named the intermediaries, sponsors, decision-makers and intellectual authors." [FN149] The Office of the Attorney General emphasized that:

These statements not only describe the facts that gave rise to the presence of the Judicial Commission that was massacred (that is, with regard to the tradesmen), but also relate how this criminal organization was created; identified its center of operations in Puerto Boyacá under the front of the ASSOCIATION OF FARMERS AND RANCHERS OF THE MAGDALENA MEDIO (ACDEGAM); […] the initial collection of quotas to support it from farmers and livestock owners, and the subsequent alliances with drug traffickers; the direct intervention and support of the commanders of the Second Division Brigades and Battalions of the National Army, as in the case of Generals FARUK YANINE DIAZ, CARLOS GIL COLORADO, VACA PERILLA, SALCEDO LORA and MANUEL MURILLO, Colonels FAJARDO CIFUENTES, DAVILA, BOHORQUEZ, LONDOÑO, VERGARA and NAVAS RUBIO, and Major OSCAR DE JESÚS ECHANDÍA SANCHEZ; the military training academies where courses are given by foreign mercenaries […and] the massacres and executions that were planned by the leaders of the groups of hired assassins […].

[FN148] Cf. expansion of the interrogatory declaration of August 3, 1995 (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47); expansion of the interrogatory declaration of November 29, 1995 (record of evidences to the brief containing pleadings and motions, volume VI, evidence 49); expansion of the interrogatory declaration of February 12, 1996 (record of evidences to the brief containing pleadings and motions, volume VI, evidence 50); statement made on August 30, 1996 (record of evidences to the application, volume I, evidence A9); expansion of interrogatory statement of July 21, 1997 (record of evidences to the application, evidence A17). These statements are summarized in several resolutions of the prosecutor's office, particularly in the resolution of January 7, 1999, issued by the Terrorism Unit of the Office of the Regional Prosecutor of Bogotá (record of evidences to the application, volume I, evidence A30, pages 327 to 331).
[FN149] Cf. indictment dated September 12, 1997, issued by the Office of the Delegate Regional Prosecutor of the National Human Rights Unit (record of evidences to the application, evidence A27, pages 273 to 275).

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161. In addition to the testimony of Alonso Baquero Agudelo, two other statements [FN150] and a public complaint [FN151] tied General Farouk Yanine to the perpetration of the massacre, and a still another statement alluded to the possible responsibility of a Navy intelligence

network. [FN152] Likewise, the relationship between the ACDEGAM paramilitary group and senior military leaders in the area has already been described (supra para. 90). In this regard, the Court observes that, even though the Office of the Attorney General and the Office of the Procurator had all of these probative elements since the mid-1990s, it was only in September 2005 that it issued an order to receive the spontaneous declarations of retired General Yanine and other senior military leaders allegedly involved in the Rochela Massacre. None of these military commanders has been formally tied to the investigation.

[FN150] Cf. testimony of Efren Galeano López, cited in the indictment of September 12, 1997, issued by the Office of the Delegate Regional Prosecutor of the National Human Rights Unit of the Prosecutor General's Office (record of evidences to the application, evidence A27, pages 277) and in the resolution of January 7, 1999, issued by the Terrorism Unit of the Office of the Regional Prosecutor of Bogotá (record of evidences to the application, evidence A30, page 334); expansion of interrogatory statement of Gonzalo Arias Alturo of January 30, 1998 (record of evidences to the application, evidence A21, pages 223-225).

[FN151] Cf. Criminal complaint by the National Coordinator of the Patriotic Union [Union Patriótica] submitted to the Delegated Procurator for the Armed Forces [Procuraduría Delegada para las Fuerzas Militares] on February 9, 1989; and criminal complaint by the Patriotic Union of Santander, the National Coordinator of the Patriotic Union [Coordinadora Nacional de la Unión Patriótica], and the Farmers' Coordinator of Magdalena Medio [Coordinadora Campesina del Magdalena Medio] submitted to the Procurator General of the Nation on February 15, 1989 (record of evidences to the brief containing pleadings and motions, volume VII, evidence 60, pages 3669 and 3670).

[FN152] Cf. interrogatory statement of Jimmy Alberto Robledo of December 19, 1996 before the National Human Rights Unit (record of evidences to the application, volume I, evidence A11, pages 134 to 143)

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162. The Court also observes that, despite the connections among the two cases (supra footnote 75 and 90) the Office of the Attorney General failed to take into account the relationship that existed between the Rochela Massacre and the case of the disappearance of the 19 tradesmen. As a result, the Office of the Attorney General excluded two individuals from the investigation. In the case of Luis Alfredo Rubio Rojas, a member of the ACDEGAM board of directors, the Office of the Attorney General found that an investigation of a member of the ACDEGAM board of directors for the acts of that group "has no connection with the multiple homicides under investigation in the [The Rochela massacre] proceedings." Consequently, it ordered that the respective investigation should be conducted separately. [FN153] In another case, when revoking the charges against retired Major Oscar de Jesús Echandía, the Regional Director of the Prosecutor's Office [Dirección Regional de la Fiscalía] found that the massacred Judicial Commission "was not investigating the disappearance of the 19 tradesmen," and therefore ruled out that the motive of the Rochela Massacre was to seize the case file on the disappearance of the 19 tradesmen, together with the related evidence, from the Judicial Commission. [FN154]

[FN153] Cf. resolution of April 7, 1997, issued by the National Human Rights Unit (record of evidences to the application, evidence A26, pages 261 and 266).
[FN154] Cf. preclusion resolution of February 18, 1998, issued by the Delegated Prosecutor for the National Tribunal [Fiscalía Delegada ante el Tribunal Nacional] (record of evidences to the application, evidence A29, pages 310 and 311).
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163. The Court observes that, instead of diligently investigating these systematic patterns during 18 years of criminal proceedings, there were at least seven attempts, [FN155] in 1990, 1999, 2000, 2001, 2005 and 2007, to identify approximately 100 individuals who had an "alias" name or whose role in the ACDEGAM paramilitary operations was unclear. Moreover, attempts were only made to identify low-ranking officers of the security forces. [FN156] Added to the fact that these efforts have evidently been fruitless, they have had no relation to an inquiry into the responsibility of those military and paramilitary commanders who had been clearly identified.

[FN155] Cf. judgment of November 14, 1990, delivered by the Sentencing Chamber of the Superior Court of Public Order (record of evidences to the application, evidence A32, pages 489-503, 523-525); report No. 00266 of January 18, 2000, issued by the Information and Analysis Section [Sección de Información y Análisis] of the National Attorney General's Office addressed to a prosecutor in the Armed Forces serving with the Unit of the Delegate Prosecutor to the Specialized Criminal Circuit Judges [Fuerzas Militares de la Unidad de Fiscalía Delegada ante los Jueces Penales del Circuito Especializados] (file of evidences to the Commission's application, evidence A38, pages 778-780); resolution of April 12, 2000, issued by the Terrorism Sub-Unit of the Delegate Unit to the Criminal Circuit Courts (record of evidences to the application, evidence A39, pages 783 and 784); resolution of April 9, 2001, issued by the Unit of Delegate Prosecutors to the Specialized Criminal Circuit Judges C.T.I. National (record of evidences to the application, evidence A43, pages 793 and 794); resolution of February 11, 1999, issued by the Terrorism Unit (record of evidences to the application, evidence A37, pages 771-776).
[FN156] Cf. resolution by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to brief containing pleadings and motions, volume VI, evidence 56, pages 3587 and 3588); and affidavit given before a notary public on January 19, 2007 by Héctor Cruz Carvajal (record of witness statements and expert reports, volume III, page 7659).
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164. The Court notes that the judicial authorities did not develop an investigation into the combination of probative elements that pointed to security forces, including senior military leaders. As a result, the investigations have been partially ineffective. In addition, there was a lack of diligence with regard to the development of a line of investigation, which took into account the complex structure of the perpetration of the crime (supra para. 158). This failure has caused some of the investigations into the Rochela Massacre to be ineffective, particularly with regard to the investigation into the responsibility of senior military commanders in the area. In this regard, the absence of an exhaustive investigation into the operational structure of the paramilitary groups and their linkages and relationships with State agents, including members of

the security forces, has been one of the factors that has hindered the investigation, prosecution and punishment of all those responsible. In particular, this affected the determination of possible responsibility of the commanders of the military battalions located within the area of operations of the paramilitary groups tied to the massacre. This situation inevitably encouraged impunity for the grave human rights violations committed by the paramilitary groups with the support and collaboration of State agents.

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Threats against judges, witnesses and next of kin

165. From the body of evidence, the Court has determined that, during the investigations into the events of this case, there were threats against judges, witnesses and next of kin. These threats have influenced the effectiveness of the proceedings. As has been indicated (supra para. 158), due diligence in the investigations implies taking into account the patterns of operation of the complex structure of individuals who executed the massacre because this structure remained in place after the massacre had been committed, and because, precisely to ensure its impunity, it operates by using threats to instill fear in investigators and in possible witnesses, or in those who have an interest in seeking the truth, as in the case of the victims' next of kin. The State should have adopted protective and investigative measures in order to confront this type of intimidation and threats.

166. Indeed, a few months after the investigation started, the proceedings were transferred from the judicial district, given "[c]ircumstances of public order in the Magdalena Medio area," and the "threats against witnesses, and the need to protect them." [FN157] In addition, the Fifth and Sixth Judges of Bucaramanga and the Sixth Public Order Judge of Bogotá [Jueces Quinto y Sexto de Bucaramanga y Sexto de Orden Público de Bogotá] based their request to change the court's venue on the fact that they had received "death threats." Moreover, in the session of the National Criminal Investigation Council [Consejo Nacional de Instrucción Criminal] of March 16, 1989, it was proposed that "to protect the life of the witnesses, they should leave the country." [FN158]

[FN157] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4574).

[FN158] Cf. resolution 1945 of June 29, 1989, issued by the Minister of Justice (record of evidences to the State's reply brief, volume I, evidence 3D, page 4634).

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167. The Commission and the representatives also alleged that "three witnesses" and "one investigating agent" were murdered, to which the State responded that "there is no evidence connecting [these deaths] to the investigations."

168. Even though the Director of International Affairs of the Attorney General's Office stated in a report that "there is no record on file which proves that these events occurred," [FN159] the

Court notes that several elements in the body of evidence of this case refer to the death of one of these witnesses (Mr. Luis María Sanabria) during the proceedings brought forward in relation to the Rochela Massacre. The United Nations Special Rapporteur on Summary or Arbitrary Executions indicated that the "Los Masetos" paramilitary group murdered Mr. Luis María Sanabria in February 1989 and that he had not received proper protection. [FN160] Likewise, both the Second Court of Public Order of Pasto and the Superior Tribunal of Public Order coincide in emphasizing that this witness "was murdered in suspicious circumstances after he had made a statement during the preliminary proceedings." [FN161] Furthermore, a resolution issued by the Office of the Attorney General on January 7, 1999, indicated that "[t]he witness LUIS MARÍA SANABRIA, who dared to speak about the existence of the 'Masetos' and its members, was murdered." [FN162] Although the Court finds proven the execution of only one of the witnesses who had collaborated with justice officials, the State's declarations demonstrate its negligence in the investigation into and the punishment of the violence perpetrated against the judicial officials and witnesses.

[FN159] Cf. report of August 28, 2006, issued by the Director of International Affairs of the Office of the Attorney General (record of evidences to the State's reply brief, volume IV, evidence 60, page 6472).
[FN160] Cf. United Nations, Report on the visit to Colombia by the Special Rapporteur on Summary or Arbitrary Executions (11-20 October 1989) Doc. E/CN.4/1990/22/Add.1, January 24, 1990, para. 37.
[FN161] Cf. judgment of June 29, 1990, delivered by the Second Court of Public Order of Pasto (record of evidences to the application, volume I, evidence A31, pages 397, 404); judgment of November 14, 1990, issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, page 474).
[FN162] Cf. resolution of the Terrorism Unit of January 7, 1999 (record of evidences to the application, volume I, evidence A30, page 350)

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169. In this context, one of the members of the paramilitary forces who helped clarify the facts received threats, [FN163] and there were persistent threats against other possible witnesses. A report issued by the Human Rights Group of the Technical Investigative Corps indicated that possible witnesses had received "death threats from the paramilitary groups if they talked to the State's security agencies." [FN164] Moreover, some of the next of kin of the victims who testified in the proceedings before the Court expressed their past and current fears resulting from the events, and stated that they had been threatened and harassed both at the time of the events and in recent years during the proceedings before the Inter-American system. [FN165] It is important to emphasize that, according to his testimony before this Court, the son of one of the deceased victims, who subsequently worked as a lawyer for the Human Rights Unit, had to go into exile twice due to death threats against him and his family. [FN166]

[FN163] Cf. expansion of the interrogatory statement of Alonso de Jesús Baquero Agudelo of May 8, 1997, before the Human Rights Unit (record of evidences to the application, volume I, evidence A16, pages 185 to 187).

[FN164] Cf. report of December 11, 2001, prepared by the Human Rights Group of the Technical Investigative Corps of the Office of the Attorney General(record of evidences to the application, volume II, evidence A45, page 805). In the same sense, see also the brief submitted by Efrain Pérez Mantilla on February 7, 1989 to the Fifth Court of Public Order of Bogotá [Juzgado Quinto de Orden Público de Bogotá] (record of evidences to the application, evidence 54, page 923).
[FN165] Cf. testimony of Arturo Salgado Garzón and Alejandra María Beltrán Uribe given before the Inter-American Court during the public hearing held on January 31 and February 1, 2007; statements sworn before a notary public (affidavits) of Luz Marina Poveda León, Alonso Castillo Mayoral, Elvia Ferreira Useche, Esperanza Uribe Mantilla, Luz Nelly Carvajal Londoño, and María Carmenza Morales Cepeda (record of witness statements and expert reports, Volumes I and II, pages 6997, 7022, 7023, 7223, 7234, 7237, 7238, 7239, 7317 and 7440).
[FN166] Cf. testimony of Virgilio Hernández Castellanos given before the Inter-American Court during the public hearing held on January 31 and February 1, 2007. The witness indicated to the Court that in both cases, his condition as a next of kin of the victim affected the threats to which he was subjected. On this issued he stated that:
I was harassed by members of the security forces that were the subject of several investigations for the violation of human rights. These individuals, through a variety of Colombian media outlets, indicated that there were several reasons that I should recuse myself from investigating any member of the security forces, or any member of the paramilitaries, because, according to them, my motivation was revenge, for a vindictive or inquisitorial fury, as one journalist in Colombia told me in his columns.
The witness stated that, on the day following the massacre, he manifested to the media that "the massacre could not have been executed by the FARC, because the [Judicial Commission] was investigating paramilitary groups and members of the security forces that were allegedly working with those groups." The witness added that "I had to go into exile for some six months due to the threats to which I was subjected once I had made my statements." He added that he had to return to exile "years later when I had to leave my position as prosecutor. At that time I also had to bring my children and my spouse into exile as well, for a little more than two years." Likewise, he indicated that "the threats were frequent and repetitive" and that in one written threat in particular "they reminded me that I was the son of one of the victims of La Rochela and they ordered me to distance myself from the investigations into the paramilitaries, under threat to my life and, textually, they threatened to "extinguish my family tree."
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170. The Court finds that the pattern of violence and threats that occurred in this case against judicial officials, the next of kin of the victims and witnesses had the effect of intimidating and frightening them so that they would not collaborate in the search for the truth. As a result, the progress of the proceedings was hindered. This situation was aggravated because safety measures were not adopted to protect some of the threatened officials, the next of kin of the victims and the witnesses. In addition, it has not been demonstrated that there was an investigation into or punishment for these acts of harassment and violence, which intensifies the context of intimidation and defenselessness created by the actions of the paramilitary groups and State agents. Thus, the proper function of the judiciary and the administration of justice has been affected in the terms of the obligations of the State to act as guarantor as established in Article 1(1) of the Convention. Furthermore, the fact that all of those responsible for the events have not

been punished makes the intimidation permanent and, to some extent, explains the grave negligence in furthering the investigation.

171. This Court finds that, in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims' next of kin from harassment and threats which are designed to obstruct the proceedings, prevent a clarification of the events of the case, and prevent the identification of those responsible for such events. [FN167]

[FN167] Cf. Case of Myrna Mack Chang. Judgment of November 25, 2003. Series C No. 101, para. 199; Case of the Ituango Massacres, supra note 15, para 400; Case of the Pueblo Bello Massacre, supra note 12, para 268; and Case of the Mapiripán Massacre, supra note 12, para 299.

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Obstacles and obstructions

172. The Court also finds that the investigation encountered obstacles when capturing some individuals and ensuring the appearance of some individuals before the judges. These obstacles are documented in several official communications issued by officials of the mobile unit that conducted the initial stages of the investigation. [FN168] In these documents, officials reported the lack of diligence of senior military leaders (General Farouk Yanine Díaz, General Carlos Julio Gil Colorado, and Colonel Jaime Fajardo Cifuentes) in effectuating the capture of paramilitary members involved in the events. For example, a delay of more than six months occurred in the capture of the well-known member of the paramilitary forces, Alonso de Jesús Baquero Agudelo (alias "Vladimir"). Years later, Luis Alberto Arrieta Morales, one of the people working for Baquero Agudelo, stated before the Office of the Attorney General that:

Following the massacre of the judges, [Vladimir] walked around Puerto Berrío without any problem[. …H]e did not come to town very often because the Fourteenth Brigade, there in Puerto Berrío, sent a communication telling him that he should not come to town because an arrest warrant had been issued[. … A] few days before he was captured, the Chief of Police of Puerto Berrío had sent a message telling him not to come to town because they had to capture him. [FN169]

[FN168] Cf. record of special visit to the Second Court of Public Order of Pasto (record of evidences to the application of the Commission, evidence A63, pages 964 a 969); official communication No. 014 of March 14, 1989, addressed to the Regional Procurator of Barrancabermeja [Procurador Regional de Barrancabermeja] (record of evidences to the brief containing pleadings and motions, volume VI, evidence 40, pages 3459 and 3460); official communication No. 163 of March 31, 1989, from the Mobile Investigative Unit to the President of the Republic (record of evidences to the brief containing pleadings and motions, volume VI, evidence 41, page 3462); official communication No. 164 of March 31, 1989, addressed to the

National Procurator General (record of evidences to the brief containing pleadings and motions, volume VI, evidence 41, page 3464).
[FN169] Cf. interrogatory statement of February 20, 2007, made by Luis Alberto Arrieta Morales before the National Human Rights Unit (record of evidences to the application, volume I, evidence A14, pages 170 and 171).
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173. Furthermore, it should be noted that two civilians accused of murder have not been captured. [FN170] On this issue, the State has not indicated the concrete measures taken in order to capture these individuals, nor the specific obstacles which it has encountered which may have prevented their capture.

[FN170] Jairo Iván Galvis and Lanfor Miguel Osuna. Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4607).
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174. In addition, the State also failed to protect the judicial officers responsible for removing the corpses on the day of the events. The Commander of the Army's Fifth Brigade, General Alfonso Vacca Perilla, did not provide them with the required protection; consequently, these officials had to travel to the site of the events on their own, and at their own risk. [FN171] This situation was even more serious if it is recalled that this General was informed that "at the site of the events, there is an injured person who is still alive." This grave omission is closely related to what the surviving victim, Arturo Salgado, stated before the Court when he expressed his surprise that no member of the Army or the Police came to help him after the massacre, even though the military battalions were only 20 to 40 minutes from the site of the massacre, and news of the massacre started to circulate at approximately 1 p.m. It was the newspaper reporters who helped him at around 5 p.m. [FN172]

[FN171] Cf. report of January 27, 1989 submitted by two agents and two technicians before the responsible authority of the Preliminary Investigative Unit of Barrancabermeja (record of evidences to the brief containing pleadings and motions, volume VI, evidence A35 pages 3432 to 3434). In this report, these officials indicated that at approximately 2:00 p.m. they received word of the massacre. At that time, and in order to undertake the retrieval of the bodies, they went to the Military Base of El Centro, accompanied by two judges of criminal investigation. According to this report, at 3:00 p.m., they requested support in order to undertake the retrieval of the bodies, but the commander of the military base and the commander of the National Police at the base reported that "we should wait until […] General VACCA PERILLA[,] commander of the Fifth Brigade [of the Army] is present." General Vacca Perilla arrived at 4:00 p.m. and the officials "met with the commander of the Nueva Granada Battalion and the [abovementioned commander] of the Police. This meeting lasted until five in the afternoon, at which point it was said that army personnel would not be dispatched to the area of the events." The investigators' report indicated that around 5:00 p.m., they were informed that "at the site of [the massacre], there was an injured individual still alive." It was also indicated that, in light of the refusal of

support by the military commanders, one of the secretaries of the Preliminary Investigative Unit went to the site of the massacre, accompanied by one technician from the Unit. He encountered surviving victim Arturo Salgado and the journalists who had helped him. Likewise, the report indicated that, since it was 6:00 p.m. and since they had not received a response from the commanders at the military base, the investigative agents and one of the criminal investigation judges went to the site of the events, despite the fact that they did not receive military support. The report also indicated that "according to the manifestations of an Army official, the investigation would be undertaken at six in the morning on the following day, "according to express orders of […] General VACCA PERILLA, and if they went to the site it would be on their own account and at their own risk. Thus, we took the risk in order to arrive at the site."
[FN172] Cf. testimonial statement by Arturo Salgado Garzón during the public hearing held before the Inter-American Court on January 31 and February 1, 2007.
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175. Regarding the obstacles to the administration of justice related to the capture of those suspected of responsibility for the massacre, the Court has stated that the delay in executing issued arrest warrants contributes to the repetition of acts of violence and intimidation against witnesses and prosecutors connected to the determination of the truth of the events, [FN173] particularly when it is demonstrated that the survivors and several of the next of kin and witnesses were harassed and threatened, and that some even had to leave the country.

[FN173] Cf. Case of the Ituango Massacres, supra note 15, para. 322.

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Unjustified delays in conducting procedural activities

176. There have also been unjustified delays in conducting procedural activities during the judicial proceedings. The following are among the most important:

(a) For six years the investigations were at a standstill. The State indicated that there were "some delays" given that "the case was in general proceedings before the Public Order Tribunal [Tribunal de Orden Público] and the Supreme Court of Justice [Corte Suprema de Justicia] from February 1990 to February 1992." [FN174] It should be noted that in 1990, the appeals court ordered that the investigation be continued with regard to individuals who were "mentioned and accused but ignored during the preliminary proceedings." [FN175] However, this order was only implemented when the National Human Rights Unit of the Attorney General's Office took over the case for the first time in 1996; [FN176]
(b) Remedying the partial nullification of the proceedings with regard to seven persons took 15 years. [FN177] This nullification was decreed in 1990 by the court that heard the case on appeal [FN178] and it was not until June 14, 2005 [FN179] that a transfer was ordered to receive arguments concerning a review of the preliminary proceedings in relation to the seven accused. The definition of the charges is still pending [FN180];

(c) It took approximately 14 years and 2 months [FN181] to comply with the order issued by the Superior Tribunal of Public Order in 1990 [FN182] in which that court ordered the production of copies of pertinent documents to be issued in order to continue the investigation of Lieutenant Luis Andrade Ortiz for conspiracy;
(d) It took 7 years and 7 months [FN183] to comply with the order to investigate retired Major Oscar Echandía for conspiracy; [FN184] and
(e) On January 19, 2007, the Office of the Attorney General reported that a "judicial identification procedure based on photographs" was pending. The Office of the Attorney General reported that this action "depends upon locating ex-convict Alonso de Jesús Baquero Agudelo, who was freed in December 2005." [FN185] The Court emphasizes that this procedure was not undertaken during the 16 years in which this individual was deprived of his liberty in the custody of the State.

[FN174] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4578).
[FN175] Cf. judgment of November 14, 1990, issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, page 525).
[FN176] The National Human Rights Unit "undertook" the case on July 28, 1996 and produced its first order related to the case in November of 1996. Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4578).
[FN177] Norberto de Jesús Martínez Sierra, Rafael Pombo, Anselmo Martínez, Robinson Fontecha, Wilson Cardona Camacho, Oscar Moreno Rivera and Jesús Antonio Cárdenas.
[FN178] Cf. judgment of November 14, 1990, issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, pages 509 to 512, 515 to 517 and 524).
[FN179] Cf. resolution of July 14, 2005, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 3R, pages 4962 and 4963).
[FN180] Cf. statement sworn before a notary public (affidavit) by Héctor Cruz Carvajal on January 19, 2007 (record of witness statements and expert reports, volume III, page 7559).
[FN181] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4588).
[FN182] Cf. judgment of November 14, 1990, issued by the Superior Tribunal of Public Order (record of evidences to the application, volume I, evidence A32, pages 509 to 512, 515 to 517 and 524).
[FN183] Cf. resolution of September 16, 2005 issued by Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the brief containing pleadings and motions, volume VI, evidence 56, pages 3587 and 3588).
[FN184] Cf. preclusion resolution issued by the Office of the Delegated Prosecutor for the National Tribunal of February 18, 1998 (record of evidences to the application, volume I, evidence A29, page 317)

[FN185] Cf. statement sworn before a notary public (affidavit) by Héctor Cruz Carvajal on January 19, 2007 (record of witness statements and expert reports, volume III, page 7559).
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177. The Court notes recent efforts designed to investigate this type of negligence through disciplinary proceedings as part of the procedural efforts to further the investigations (infra para. 208, 213 and 214). Nevertheless, this does not eliminate the grave consequences that these omissions and delays may have had on the investigation and on gathering evidence.

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178. The Court recognizes the complexity of the matters that are being investigated by the domestic judicial bodies in relation to this massacre. Nevertheless, the Court observes that, given the nature and gravity of the events, as well as the number of participants involved in them (paramilitary groups acting with the support of the security forces), the means used and the results achieved have not been sufficient to guarantee effective access to justice. Even though there have been some investigations and convictions, impunity remains in this case, to the extent that the entire truth about the events has not been determined and all those responsible for the events have not been identified. The Court must observe, as it has in other cases concerning Colombia, [FN186] that the events that are the subject of this Judgment form part of a situation in which a high level of impunity exists for criminal acts perpetrated by paramilitary forces with the acquiescence, collaboration and support of members of the security forces. If the illegal actions of these groups are not adequately addressed by the judiciary, in a manner faithful to the international commitments of the State, fertile ground is created such that these state-supported groups which operate illegally may continue to commit acts like those of the present case.

[FN186] Cf. Case of the Ituango Massacres, supra note 15, para. 324; Case of the Pueblo Bello Massacre, supra note 12, para. 149; and Case of the Mapiripán Massacre, supra note 12, para. 235.
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179. Based on all the above findings, the Tribunal concludes that the criminal proceedings in relation to the events of the Rochela Massacre have not been conducted within a reasonable time and have not constituted an effective recourse to ensure the rights to judicial access, the determination of the truth of the events, and reparation for the alleged victims and their next of kin.

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180. In the proceedings before the Court, the parties have submitted allegations, information, and documentation with regard to Law 975 of 2005 known as the “Justice and Peace Law,” [FN187] which forms part of the normative framework for the demobilization process of paramilitary groups, [FN188] reinsertion, and the granting of penal benefits. The parties have also submitted allegations, information and documentation with regard to other pieces of this normative framework, such as Decree 128 of 2003.

[FN187] Cf. Law 975 of 2005 of July 25, 2005, "by which dispositions for the reincorporation of organized illegal armed groups are dictated. These dispositions effectively contribute to the attainment of national peace. Other dispositions are dictated with regard to humanitarian accords" (record of evidences to the brief containing pleadings and motions, volume VIII, evidence 77(1), pages 3868 to 3886); and the Commission's application, paragraph 85 (record of the merits and possible reparations and costs, volume I, page 28).

[FN188] In August 2002, several leaders of the United Self-Defense Forces of Colombia [Autodefensas Unidas de Colombia] (hereinafter "the AUC") publicly announced their intention to negotiate terms for the demobilization of their forces. At that time, when negotiations commenced, the procedures for the demobilization of illegal armed forces were regulated by Law 418 of 1997 (which included several dispositions for reconciliation, judicial effectiveness, and other dispositions). This Law was extended by Law 548 of 1999 and Law 782 of 2002. Cf. Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 125.14 and 125.16; and Case of the Pueblo Bello Massacres. Judgment of January 31, 2006. Series C No. 140, para. 95.18.

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181. On January 22, 2003, the Government adopted Decree 128 of 2003 in order to regulate the implementation of Law 418 of 1997. [FN189] This decree established socio-economic and other benefits for those individuals who demobilized. Article 13 established "juridical benefits" and stipulated that, "pursuant to the law, those who formed part of illegal armed organizations who demobilize will have the right to a pardon, conditional suspension of the execution of sentence, cessation of proceedings, preclusion of the investigation, or a writ of prohibition, according to the stage of the proceedings […]." Furthermore, Article 21 of this decree excluded from the enjoyment of these benefits "[t]hose that are being tried or have been convicted for crimes which, pursuant to the Constitution, the law, or the international treaties signed and ratified by Colombia, are not subject to this type of benefit. [FN190]

[FN189] In 2003, an action was filed before the Council of State to invalidate several provisions of Decree 128 of 2003. This action has not yet been resolved and, according to a certification issued by the Secretariat of the First Division of the Administrative Law Chamber of the Council of State [Secretario de la Sección Primera de la Sala de lo Contencioso Administrativo del Consejo de Estado], it is "awaiting a ruling." (record of evidences to the State's written closing arguments, volume II, evidence 1B, page 7976.

[FN190] Cf. Decree 128 was issued on January 22, 2003, and "regulates the implementation of Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 concerning reinsertion into civil society" (record of evidences to the State's written closing arguments, volume II, evidence 10A, pages 7925 to 7932).

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182. Law 975 of 2005 applies to demobilized individuals who "have been or could be charged, accused or convicted" of those crimes that are excluded from the juridical benefits established in Acts 418 of 1997, 782 of 2002 and Decree 128. [FN191] Article 3 of Law 975 establishes the

benefit of "alternative" punishment which "consists in the suspension of the punishment ordered in the respective judgment, and replacing it with an alternative punishment," of 5 to 8 years, "which is granted on the basis of the beneficiary's contribution to national peace, collaboration with justice, reparation to the victims, and satisfactory reinsertion in society." This benefit is granted pursuant to the "eligibility requirements" established in Articles 10 and 11 of Law 975.

[FN191] Cf. Justice and Peace Law [Ley de Justicia y Paz], Article 10 (record of evidences to the final written arguments submitted by the State, volume I, evidence 1A, page 7703); and expert opinion provided by Rodolfo Arango Rivadeneira at the pubic hearing held on January 31 and February 1, 2007.

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183. In its judgment of May 18, 2006, the Colombian Constitutional Court [Corte Constitucional de Colombia] ruled upon suits which alleged that Law 975 was unconstitutional, and declared that most of the articles of the Law were constitutional, ruled some articles unconstitutional, and conditioned the constitutionality of others. [FN192] In this judgment, the Constitutional Court established, inter alia, that Law 975 is an ordinary law regulating criminal proceedings and cannot be compared to a law granting amnesty or pardon because it does not prevent ongoing criminal prosecutions from continuing and it does not eliminate penalties; rather, it grants juridical benefits in order achieve peace. That court also established that the benefit of an alternative punishment was constitutional, because it did not affect disproportionately the rights of the victims to truth, justice, reparation and non-repetition, which it found were also protected by Law 975.

[FN192] Cf. judgment C-370 delivered by the Colombian Constitutional Court on May 18, 2006 (record of evidences to the State's reply brief, volume III, evidence 46, pages 6004 to 6007).

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184. The Constitutional Court emphasized that Law 975 of 2005 is a law relating to transitional justice [FN193] and examined the different arguments against this law in light of the rights to truth, justice, reparation and non-repetition from the perspective of international human rights law and Colombian constitutional law. The Constitutional Court examined, inter alia, the time period within which the prosecutor is required to conduct the investigation, the requirements for acquiring the juridical benefits established in the Law and the grounds for losing these benefits, the proportionality of the alternative punishment, the means and mechanisms of reparation, and the participation of the victims in the judicial proceedings. The Constitutional Court decided "not to apply [its] judgment retroactively […]." [FN194] Following the Constitutional Court's judgment, the Government issued decrees regulating the implementation of Law 975 of 2005. [FN195]

[FN193] Cf. judgment C-370 delivered by the Colombian Constitutional Court on May 18, 2006 (record of evidences to the State's reply brief, volume III, evidence 46, pages 5869 to 5871, and 5916 to 5921).

[FN194] Cf. judgment C-370 delivered by the Colombian Constitutional Court on May 18, 2006, findings 4(2) and 5 (record of evidences to the State's reply brief, volume III, evidence 46, page 6003).
[FN195] Cf. Decree 2898 of August 29, 2006, regulating Law 975 of 2005; Decree 3391 of September 29, 2006, regulating the implementation of Law 975 of 2005; Decree 4417 of December 7, 2006, modifying Decree 2898 of 2006; Decree 315 of February 7, 2007, regulating the intervention of victims during the investigative stage of the Justice and Peace proceedings in accordance with the provisions of Law 975 of 2005 (record of the merits, possible reparations and costs, volume V, pages 1847-1849).
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185. The representatives indicated that there were "actual and potential limitations" to the rights of the victims "imposed by the normative framework for demobilization." They alleged, inter alia, that Decree 128 had been applied to "over 90% of the 31,689 paramilitaries who had been demobilized collectively," many of whom will receive pardons owing to the "indifference" and "ineffectiveness of the judicial system" to "determine whether they had committed grave human rights violations or had information about such violations." They added that, regarding "the spontaneous declarations [versiones libres] of those who have demobilized under Decree 128 (which is almost an administrative procedure), [… n]either the victims nor their legal representatives are allowed to be present when [this] spontaneous declaration is received." They stated that the non-retroactive nature of the Constitutional Court's judgment C-370 of 2006 "has been invoked to nullify some of the positive aspects [of the judgment]" such as the court's declaration that, inter alia, the article that stipulates that "the time demobilized paramilitary combatants remain in a demobilization assembly area [zona de concentración], up to a total 18 months, can be taken into account as part of their sentence," is unconstitutional and the court's decision that conditions the constitutionality of the spontaneous declarations to the extent they are "complete and truthful." The representatives indicated that the demobilized paramilitaries "could argue the principle of lenity in order to request […] that the version of Law 975 prior to the Constitutional Court's ruling be applied to them." [FN196] Regarding the right to the truth, they maintained that "neither adequate identification nor the full confession of those who demobilize under Decree 128" is required and, in relation to Law 975, they stated that "the benefit can only be lost when the demobilized individual conceals the crime he himself has committed. In other words, he does not lose the benefit when he fails to provide information about a crime committed by others of which he has knowledge, or when he acknowledges that he has taken part in a crime, but does not provide all the information he possesses about its perpetration. The representatives added that there is no guarantee that the demobilized individual is offering "detailed information about the planning, perpetration (including names of participants and collaborators), and concealment of the crimes committed by him. Nor is there a guarantee that the demobilized individual is offering detailed information about other crimes for which he has knowledge but in which he did not participate, or detailed information on the functioning of the group to which he belonged, including its members, structure, sources of financing, and relationship with State agents." They stated that Law 975 "does not establish that the representatives of the victims may address questions directly to those who are demobilizing." In addition, they indicated that it is an unacceptable restriction to the victims' right to justice that the Justice and Peace Law establishes, "such an inadequate maximum penalty" that "significantly restricts the judge's reasoned assessment of the appropriate penalty." They also

stated that the way in which the Justice and Peace Law regulates accumulated penalties "is a concealed amnesty or pardon of the penalty." They added that Decree 128 "does not allocate any obligation to make reparation to its beneficiaries or establish a mechanism by which the victims can seek redress", and that Law 975 establishes the State's "subsidiary responsibility" to provide redress but "does not establish mechanisms for the reparation of damages caused by the State." Moreover, they stated that, "[i]n cases in which paramilitaries and State agents are found to be jointly responsible, victims are faced with a fragmented collection of entities which provide reparations. This situation obliges them to seek redress through several channels simultaneously," which "places the victims in a situation of total uncertainty and inequality in the proceedings […]." Consequently, the representatives asked the Court to order the State to, inter alia: require "full confessions" from the beneficiaries of Decree 128 and Law 975; allow the victims "ample and direct participation at all stages of the judicial proceedings brought under Decree 128"; and guarantee "the participation of the victims at all stages of the proceedings filed under Law 975, including the ability to question the beneficiary directly." The representatives concluded that "Decree 128 […] is a de jure and de facto obstacle to the effective investigation of the violations and the clarification of the events surrounding them"; "therefore it constitutes a violation of the obligation to adopt provisions of domestic law to make rights effective" and that this violation of Article 2 of the American Convention "will be exacerbated if a version of Law 975 is applied that does not incorporate the modifications introduced by the judgment" of the Constitutional Court.

[FN196] The representatives added that the Government has used Decree 3391 of September 29, 2006, "to reintroduce provisions that had been declared unconstitutional, by [invoking] the non-retroactivity of judgment C-370."

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186. The State indicated, inter alia, that "[t]he benefits [established in Decree 128] apply only to offenses that are considered [...] political" and "[u]nder no circumstances [...] are they applied to offenses that constitute grave violations of human rights or international humanitarian law." Moreover, the State clarified that "Article 21 of the Decree revokes the benefits when those who are prosecuted or convicted [have] committed 'offenses for which [...] this type of benefit cannot be applied,'". Regarding the Justice and Peace Law, it stated that "at first […], the law may have represented a significant restriction to the right to truth, justice and reparation[, b]ut […] the Constitutional Court's judgment rectified these possible flaws." Regarding the debate concerning the non-retroactivity of the Constitutional Court's judgment C-370 of 2006, the State maintained that "the principle of lenity should be understood not as a rule, but as a constitutional principle that must be weighed together with other constitutional principles." Consequently, "the court's ruling can be applied retroactively in those cases in which this it is essential to safeguard the rights of the victims," without completely eliminating the principle of lenity. For example, the principle of lenity prevails in the stipulation that "the time those who are demobilized spend in the demobilization assembly area should be counted as part of the alternative penalty." Colombia also indicated that the right to the truth of the victims "is fully guaranteed," because "currently, it is understood that they can participate at any stage of the criminal proceedings" and that, "for the demobilized individual to be able to acquire the juridical benefits [established in Law 975...], he must have made a complete confession of all the crimes committed as a result of his membership

in the illegal armed group." Likewise, the State indicated that "alternative punishment is a tool of proportionality in keeping with the right to justice" and that the granting of "amnesties or pardons [is prohibited ...] in cases of grave human rights violations." The State emphasized that the penalties are proportionate, bearing in mind the requirements that demobilized individuals must meet: they must "make a full confession of all their crimes and those of their group;" "make integral reparation to the victims;" and "guarantee that atrocious acts such as these are not repeated." In addition, it clarified that the benefit of the alternative punishment may be revoked if these requirements are not met and, moreover, that the "action for review is admissible even when the alternative sentence has been served." Finally, Colombia stated that the Justice and Peace Law guarantees reparation for the victims "as individuals and collectively," by seizing the legal and illegal assets of those who are demobilized and by implementing institutional programs to provide collective reparation.

187. The Commission stated that "in principle, Law 782 and Decree 128 would not constitute per se a legal obstacle to the investigation of crimes against humanity or grave human rights violations [since they would only be applicable to offenses defined as conspiracy to commit a crime], and that the writ of prohibition arising from these norms does not have the effect of res judicata in relation to future criminal investigations." The Commission also indicated that "the Colombian judicial system has not established punishments for any of the individuals who have been demobilized or charged based on the application of the Justice and Peace Law" and that "the debate continues with regard to which of the articles rectified by the Colombian Constitutional Court's judgment could be applied to the proceedings as a result of the principle of lenity." In addition, the Commission indicated that "the decision about whether [some individuals accused of the facts of the Rochelacase] meet the eligibility requirements [of the Justice and Peace Law] still depends on a decision, first, of the Attorney General and then of the Justice and Peace Tribunal; they are responsible for determining whether that legal framework is applicable to this specific situation." The Commission added that "all these discussions are taking place within the Colombian legal system and with the intervention of a variety of judicial institutions." Consequently, the Commission "considers that, on the one hand, there is the matter of the relationship between this debate and the facts of the case and, on the other hand, it is essential that the debate on this legal framework should not take place in abstract or exclusively academic terms, but rather, that it should examine how this legal framework will be applied to a concrete and specific situation."

188. At the public hearing, the Court requested that in their final written arguments the parties submit precise information on the current and possible future application of the normative framework for demobilization to individuals who could be tied to the "The Rochela massacre" or to the paramilitary groups that are alleged to have taken part in the massacre. In its final written arguments of March 2, 2007, the State submitted a list of individuals who are among "those who have received a pardon and subsequently applied for access to the benefits of Law 975 of 2005"; they include: Iván Roberto Duque Gaviria, Ramón María Isaza Arango, José Anselmo Martínez Bernal and Ricardo Antonio Ríos Avendaño. The Court observes that these individuals are implicated in the investigations into the Rochela Massacre (supra para. 98, footnote 74; para. 153(d), footnote 128; para. 154(b), footnotes 131 and 133; and para. 154(e), footnote 139). The Court also observes that Gilberto Silva Cortés, accused of the murder of the members of the Judicial Commission (supra para. 154(e), footnote 138), accepted the charges against him and

requested that the alternative punishment established by Law 975 of 2005 be applied to him. [FN197] The representatives stated that Gilberto Contrera Contrera and Faber Alejandro Rivera Correa are on the list submitted by the State and that these individuals are included in an order for production of evidence [auto de pruebas] issued by the prosecutor in relation to the full identification and location of 103 persons allegedly involved in the Rochela Massacre. [FN198]

[FN197] Cf. record of the public hearing of December 1, 2006 before the First Criminal Court of the Specialized Circuit of Bucaramanga (evidence 1 of the representatives' written closing arguments, record of the merits, possible reparations and costs, volume V, pages 1587 and 1588). [FN198] Cf. Articles 16 and 28 of Law 975 of 2005 of July 25, 2005.

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189. On March 26, 2007, the State submitted a report of the National Prosecutor's Unit for Justice and Peace. The State indicated that the report includes "the names of the individuals that the representatives mention as being involved in the events of the present case, and who are being processed under norms of Law 975." In this report it indicated that the Law 975 procedure "begins once the National Government […] sends the Attorney General's Office the list of those who have applied for the procedure and benefits" of this Law. In this regard, as stated by the Prosecutors' Unit, "the mere declaration of the demobilized individuals is not sufficient to initiate the respective procedure." Accordingly, the Unit reported that "from the list submitted by the "Department of [International Relations of the Office of the Attorney General]" the names of the following people "have been put forward": Iván Roberto Duque Gaviria, Ramón María Isaza Arango, Mauricio Alvares Segura and Jorge Eliécer Mosquera Mosquera. Finally, this report states that "the proceedings are at the investigative stage, having been initiated with the confession of Mr. Duque Gaviria on March 22, 2007."

190. Based upon the evidence presented by the parties, the Court observes that the application of the Justice and Peace Law is at the initial stage of proceedings, during which the confessions of some of the demobilized individuals are being received. During a future second stage, it will be determined whether the demobilized individuals who have applied meet the eligibility requirements to accede to the benefits established by the Law. The corresponding decisions will be adopted, inter alia, by the National Prosecutor's Unit for Justice and Peace and by the Superior Tribunals of the Judicial District that have been selected to this purpose. The Court notes that the application of this special procedure adds to the 18 years of judicial proceedings held in relation to this case.

191. Likewise, the Court notes that the representatives argued that "the Court should have established general principles that permit a demobilization process that respects the principles and standards of truth, justice, and reparations." Moreover, the Commission expressed that "it is very important that the Court establish, as it has done in other cases, guiding principles for the process of the application of this legal framework within the domestic courts." The Commission suggested that these principles should include, inter alia, "a principle of proportionality that does not benefit only the accused, but rather which constitutes a right for the victim of grave violations of human rights." Likewise, the Commission "note[d] that it is important" that the Court "ratify the principle of the direct and principal responsibility of the State to provide redress

to the victims of the demobilized groups" and that "in the investigation of grave violations of human rights it is impossible to reconcile soft or illusory punishment, or punishments which represent the mere appearance of justice with the American Convention." The State, when referring to the proportionality of the punishment, maintained that although the Court might not indicate "precisely and mathematically what would be the minimum and maximum penalties applicable to a particular case" it could "give general criteria for evaluation".

192. Given that uncertainty exists with regard to the content and scope of Law 975, and the fact that the initial special criminal proceedings are underway which could provide juridical benefits to individuals who have been identified as having some relationship to the events of the Rochela Massacre, and taking into account that no judicial decisions have yet been issued in these proceedings, as well as the parties' requests (supra para. 191), the Court deems it important to indicate, based on its jurisprudence, some aspects of the principles, guarantees and duties that must accompany the application of the juridical framework of the demobilization process. Likewise, it is necessary to indicate that state agents and authorities are obligated to guarantee that internal norms and their application conform to the American Convention [FN199].

[FN199] Cf. Case of La Cantuta, supra note 8, para. 173; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 128; and Case of Almonacid Arellano et al., supra note 16, para. 124.

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193. In order for the State to satisfy its duty to adequately guarantee the range of rights protected by the Convention, including the right to judicial recourse, and the right to know and access the truth, the State must fulfill its duty to investigate, try, and, when appropriate, punish and provide redress for grave violations of human rights. To achieve this objective, the State should observe due process and guarantee the principles of expeditious justice, adversarial defense, effective recourse, implementation of the judgment, and the proportionality of punishment, among other principles.

194. States have the duty to initiate ex officio, without delay, and with due diligence, a serious, impartial and effective investigation designed to fully establish responsibility for violations [FN200]. In order to achieve this objective, it is necessary, inter alia, that an effective system exist to protect judicial branch officials, as well as victims and their next of kin. Moreover, when necessary, it is important to expose the existence of complex criminal structures and their connections which made the violations possible. In this sense, dispositions that impede the investigation and punishment of those responsible for grave violations are inadmissible. [FN201]

[FN200] Cf. Case of Vargas Areco, supra note 8, para. 76 and 77; Case of Ximenes Lopes, supra note 24, para. 148; and Case of the Ituango Massacres, supra note 15, para. 296.
[FN201] Cf. Case of Molina Theissen. Reparations. Judgment of July 3, 2004. Series C No. 108, para. 84; Case of Myrna Mack Chang, supra note 167, para. 276; and Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, para. 41.

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195. In cases of grave violations of human rights, the positive obligations inherent in the right to truth demand the adoption of institutional structures that permit this right to be fulfilled in the most suitable, participatory, and complete way. These structures should not impose legal or practical obstacles that make them illusory. The Court emphasizes that the satisfaction of the collective dimension of the right to truth requires a legal analysis of the most complete historical record possible. This determination must include a description of the patterns of joint action and should identify all those who participated in various ways in the violations and their corresponding responsibilities. Moreover, the investigation must be undertaken by the State as its own legal obligation, and not as a superficial administration of private interests, which depends upon the procedural initiative of the victims or their next of kin, or upon the production of evidence by private parties. [FN202] With regard to the participation of the victims, the State should guarantee that at every stage of the proceedings the victims have the opportunity to present their concerns and evidence, and that these be completely and seriously analyzed by the authorities before determining the facts, responsibility, penalties, and reparations. [FN203]

[FN202] Cf. Case of Goiburú et al., supra note 11, para. 117; Case of the Pueblo Bello Massacres, supra note 12, para. 144; and Case of Baldeón García, supra note 112, para. 146.
[FN203] Cf. Case of Ximenes Lopes, supra note 24, para. 193; Case of the Ituango Massacre, supra note 15, para. 296; and Case of Baldeón García, supra note 112, para. 146.

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196. With regard to the principle of proportionality of the punishment, the Court deems it appropriate to emphasize that the punishment which the State assigns to the perpetrator of illicit conduct should be proportional to the rights recognized by law and the culpability with which the perpetrated acted, which in turn should be established as a function of the nature and gravity of the events. [FN204] The punishment should be the result of a judgment issued by a judicial authority. Moreover, in identifying the appropriate punishment, the reasons for the punishment should be determined. With regard to the principle of lenity based upon the existence of an earlier more lenient law, this principle should be harmonized with the principle of proportionality of punishment, such that criminal justice does not become illusory. Every element which determines the severity of the punishment should correspond to a clearly identifiable objective and be compatible with the Convention.

[FN204] Cf. Case of Vargas Areco, supra note 8, para. 108; Case of Raxcacó Reyes. Judgment of September 15, 2005. Series C No. 133, para. 70 and 133; and Case of Hilaire, Constantine and Benjamin et al., supra note 33, para. 102.

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197. Likewise, it must be noted that the principle of res judicata provides protection from another judgment only when this judgment is reached with due respect for the guarantees of due process, in conformity with the Tribunal’s jurisprudence on this subject. [FN205] On the other hand, if new facts or evidence are discovered which make it possible to ascertain the identity of

those responsible for grave human rights violations, investigations can be reopened, even if the case ended in an acquittal with the authority of a final judgment.

[FN205] Cf. Case of Almonacid Arellano et al., supra note 16, para. 154.

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198. Finally, the State has the non-derogable duty to directly provide redress to the victims of human rights violations for which it is responsible according to the standards of attribution of State responsibility and reparation established by the Court in its jurisprudence. Moreover, the State must ensure that the reparation claims formulated by the victims of grave human rights violations and their next of kin do not encounter excessive procedural burdens or obstacles that could present an impediment or obstruction to the satisfaction of their rights.

b) Proceedings in the Military Criminal Courts

199. The Commission alleged that, in this case, the application of the military criminal justice system constituted a violation of the "principle that cases should be tried by an appropriate and impartial judge [juez natural], of due process, and of access to adequate judicial recourse." The representatives agreed with the Commission and added that the intervention of the military criminal justice system clearly obstructed the investigation in the ordinary criminal courts. During the proceedings before the Court, the State acknowledged that the military criminal courts did not have jurisdiction to hear the case. Nevertheless, it indicated that, in the present case, the intervention of the military criminal justice system "has diminished notably" and that the case file had been "transferred to the ordinary justice system." It also indicated that "at the time of the facts, the authorities of the Inter-American system had not yet issued their rulings on the military criminal justice system; however, as they have become known, the State has been developing a policy that establishes limits to that system, in accordance with the terms and scope indicated at the international level."

200. The Court has established that the military criminal courts should have a restrictive and exceptional scope, bearing in mind that they should only judge members of the armed forces when they commit crimes or misdemeanors that, owing to their nature, affect rights and duties inherent to the military system. [FN206] In this regard, when the military justice system assumes jurisdiction over a matter that should be heard by the ordinary justice system, the right to have a case tried by the appropriate judge is affected. [FN207] This guarantee of due process should be examined taking into account the object and purpose of the American Convention, which is the effective protection of the individual. [FN208] For these reasons, and due to the nature of the crime and the rights and freedoms damaged, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations.

[FN206] Cf. Case of La Cantuta, supra note 8, para. 142; Case of Almonacid Arellano et al., supra note 16 para. 131; and Case of the Pueblo Bello Massacre, supra note 12, para. 189.

[FN207] Cf. Case of Almonacid Arellano et al., supra note 16, para. 131; Case of Palamara Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 143; and Case of the 19 Tradesmen, supra note 33, para. 167.
[FN208] Cf. Case of the 19 Tradesmen, supra note 33, para. 173.
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201. In this case, despite the fact that the ordinary criminal courts had already started to investigate Lieutenant Luis Enrique Andrade, based on his collaboration with the "Los Masetos" paramilitary group, the military criminal courts ordered that he should be investigated for the same facts in this jurisdiction. As a result, on October 31, 1989, an order was issued in his favor such that the proceedings were closed for the crime of homicide. [FN209]

[FN209] Cf. judgment of October 31, 1989, issued by Military Preliminary Criminal Investigations Court 126 (record of evidences to the application, evidence A52, page 845).
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202. On November 14, 1990, the ordinary criminal courts ordered that copies be made of the proceedings against Lieutenant Andrade in those courts so that he could be investigated for conspiracy in the military criminal courts. This order was executed in January 2005, more than 14 years after it had been issued. [FN210] Given the passage of time, the military criminal courts initially declared that the action had prescribed, and subsequently declared that it lacked jurisdiction to hear the case; the case file was therefore returned to the ordinary criminal justice system. [FN211] On October 19, 2005, the Attorney General's Office nullified the military court's decision in which it had declared that the suit was time-barred, [FN212] and on January 19, 2007, the Attorney General's Office decided to bring Lieutenant Andrade under investigation in the ordinary criminal courts for the offense of conspiracy. [FN213]

[FN210] Cf. report of August 25, 2006, issued by the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume I, evidence 1, page 4588).
[FN211] Cf. judgment of February 28, 2005, issued by Military Preliminary Criminal Investigations Court 75 (record of evidences to the State's reply brief, volume I, evidence 3-O, pages 4895, 4897, 4901, 4903, 4905 and 4906); judgment of June 7, 2005, issued by the Superior Military Tribunal [Tribunal Superior Militar] (record of evidences to the State's reply brief, volume I, evidence 3-P, pages 4920 to 4922 and 4925).
[FN212] Cf. resolution of October 19, 2005, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume II, evidence 3S, page 4987).
[FN213] Cf. resolution of January 19, 2007, issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume II, pages 8015 to 8018).----------
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203. The Court notes that, in addition to the transfer of the investigation in 1990 to courts, which manifestly lacked jurisdiction, the extreme negligence in complying with this transfer impeded the investigation of the conduct of Lieutenant Luis Enrique Andrade Ortiz for 17 years. As a result, the lack of due diligence in determining the responsibilities of the soldiers in this case has been aggravated.

204. Based on the foregoing, the Court concludes that the trial of Army Lieutenant Andrade for the crime of murder in the military criminal courts, which lacked jurisdiction, violated the principle of the competent, independent and impartial court [juez natural] which requires a case to be heard by the appropriate judge and, in tandem, the right to due process and judicial access. Moreover, with regard to the investigation of this Army officer for the offense of conspiracy, no investigation at all was conducted in the competent jurisdiction for a long time, due to the transfer of the investigation to the military criminal courts.

c) Disciplinary Proceedings

205. The Commission did not submit allegations with regard to the disciplinary proceedings and their relationship to the violation of Articles 8 and 25 of the Convention. However, the representatives stated that, "[t]he operation of the statute of limitations in [the] disciplinary actions was due exclusively to the extreme negligence of the disciplinary body." They further alleged that, "the fact that, in the 17 years that have elapsed since the massacre was perpetrated, no State agent has received a disciplinary sanction in relation to it, violates the right of the victims and their next of kin to judicial protection." In this regard, the State indicated that "[e]ven though the disciplinary proceedings, which conducted as a result of shortcomings in the investigation, were not incorporated into the ordinary criminal proceedings, they complement the State's investigative function."

206. The Court assesses any decisions that the disciplinary proceedings may have produced, bearing in mind the symbolic value of the message of censure of public officials and members of the Armed Forces that this type of sanction may signify. [FN214] Moreover, the Court stresses the importance of these proceedings in order to control the actions of these public officials, particularly in situations where the human rights violations occur within generalized and systematic patterns.

[FN214] Cf. Case of the Pueblo Bello Massacre, supra note 12, para. 203; and Case of the Mapiripán Massacre, supra note 12, para. para. 215.

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207. Regarding the relationship between this jurisdiction and the right of access to justice, the Colombian Constitutional Court has found that "although the general rule indicates that there are no victims under disciplinary law, because the offenses relate to breaches of function-related duties and do not harm rights, exceptionally there may be victims of a disciplinary offense when the infraction relates directly and inseparably to a violation of international human rights law or international humanitarian law." In this regard, the Constitutional Court stated that:

The victims or those injured as a result of a disciplinary offense which constitutes a violation of international human rights law or international humanitarian law may legitimately intervene in the disciplinary proceedings so that the truth of the events may be established. Thus, they have the right that the factual sequence of events be faithfully reconstructed, so that in these specific proceedings, the offenses do not remain in impunity. In other words, the said victims or individuals who have been prejudiced have the right to demand that the State conduct rigorous investigative activities to determine the circumstances in which the breach of the functional duty was committed that, inseparably, led to the violation of their rights and, once these circumstances have been clarified, they have the right that disciplinary justice be done. [FN215]

[FN215] Cf. judgment C-014/2004, issued on January 20, 2004, by the Colombian Constitutional Court.

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208. In this case, the disciplinary tribunals intervened by way of two investigations. Initially they intervened with regard to the soldiers accused of being involved in the events surrounding the massacre and, subsequently they intervened with regard to the judicial officials allegedly responsible for the unjustified delays in the investigation of the massacre (supra para. 176).

209. Regarding the first disciplinary investigation, on February 6, 1989, the Delegated Office of the Procurator for the Armed Forces started preliminary procedures based on criminal complaints brought against Lieutenant Oswaldo Prado and "Lieutenants Andrade and Pachón" for allegedly aiding and abetting the "Los Masetos" paramilitary group. [FN216] Some of these criminal complaints, both to this Delegated Procurator's Office and to the Procurator General's Office mentioned a "Captain Zúñiga" and emphasized "the responsibility of the commander of the Luciano D'Luyer Battalion" and indicated that "the paramilitary groups […] act[ed] with impunity, supported and protected by sectors of the Armed Forces from the Army's Second Division under the leadership of General Faruk Yanine Díaz" [FN217] and the "Bárbula Battalion led by Colonel Bohórquez." [FN218]

[FN216] Cf. official communication 2012 of April 12, 1989, signed by the Delegated Procurator for the Armed Forces (record of evidences to the application, volume II, evidence A55, page 926).

[FN217] These complaints were submitted by several members of the Patriotic Union political party and other organizations and community leaders (record of evidences to the application, volume II, evidences A56, A57, A58 and A59; and record of evidences to the brief containing pleadings and motions, volume VI, evidences 57 and 58 and volume VIII, evidence 78).

[FN218] Cf. statement made by Martín Emilio Sánchez Rodríguez to the Office of the Procurator General (record of evidences to the application, volume II, evidence 65, pages 977 and 979).

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210. On October 25, 1989, the First Public Order Prosecutor [Fiscal Primero de Orden Público] and a legal adviser to the Office of the Procurator made a "special visit" to trial No. 55 concerning the Rochela Massacre being held before the Second Court of Public Order of Pasto

(supra para. 153(a)). The purpose of this visit was "to comply with the order of the Delegated Office of the Procurator for the Armed Forces in a decision of August 15, 1989" in order to "establish whether or not military personnel were involved in the events investigated." [FN219] The report that the officials produced indicated that "evidence exists, which is more than merely circumstantial, concerning the responsibility of military personnel as material and intellectual authors of the crimes that the murdered commission was investigating." [FN220]

[FN219] Cf. record of the special visit to the Second Court of Public Order of Pasto (record of evidences to the application, evidence A63, pages 958, 959, 960, and 964).
[FN220] Cf. report dated November 3, 1989, issued by the First Public Order Prosecutor and the Legal Adviser to the Procurator General's Office (record of evidences to the application, volume II, evidence A64, page 975).

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211. On February 6, 1991, the Delegated Office of the Procurator for the Armed Forces drew up a list of charges against Major Oscar Robayo Valencia, Lieutenant Luis Enrique Andrade Ortiz and Sergeant First Class Otoniel Hernández Arciniegas. [FN221] On June 7, 1994, the Delegated Office of the Procurator for the Armed Forces decreed that the disciplinary action had become time-barred. [FN222]

[FN221] Cf. resolution and list of charges issued by the Delegated Office of the Procurator for the Armed Forces of February 6, 1991 (record of evidences to the application, volume II, evidences A66, A67, A68, A69, page 996, 998, 999, 1001, 1003 and 1004).
[FN222] Cf. resolution No. 338 of June 7, 1994, issued by the Delegated Office of the Procurator for the Armed Forces (record of evidences to the brief containing pleadings and motions, volume VII, evidence 69, pages 3712 to 3715); and statement of Nubia Herrera Ariza of December 22, 2006 sworn before a notary public (affidavit) (record of witness statements and expert reports, volume III, page 7689).

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212. Regarding the first disciplinary investigation, the Court emphasizes that the activity in these tribunals with regard to Major Robayo, Lieutenant Andrade and Sergeant Hernández did not lead to the clarification of the events which occurred, despite their gravity and the time which elapsed during the proceedings. Moreover, given the magnitude of the events of the present case, it is reasonable to presume that much of the conduct of public officials in the region, among them members of the armed forces who could have been involved in the events, were not examined in the disciplinary tribunals. This fact not only eliminates any type of effectiveness of these proceedings, but also accentuates the situation of defenselessness of the victims and the lack of will to effectively investigate and punish, albeit disciplinarily, those members of the security forces that participated in or permitted the events of the Rochela Massacre in one way or another.

213. Regarding the second disciplinary investigation, on September 12, 2005, the Court takes note of the disciplinary proceedings opened with regard to some judicial official allegedly responsible for grave negligence in the handling of the case. According to Colombia, disciplinary

proceedings were opened on September 12, 2005 against the Second Public Order Judge of Pasto [Juez Segunda de Orden Público de Pasto] and four special prosecutors from the Terrorism Sub-Unit for "alleged unjustified delays in processing the criminal proceedings related to the events of 'The Rochela.'" [FN223] However, the final decisions of these proceedings were not submitted to this Court.

[FN223] Cf. State's reply brief (record of the merits and possible reparations and costs, volume III, pages 772 and 773).

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214. Moreover, the Court notes that the disciplinary officials did not investigate the alleged obstruction of the investigation by senior military commanders (supra para. 172 to 175) or the alleged support provided by police inspectors and other civilian authorities to the paramilitary groups in the area. [FN224]

[FN224] Cf. report of March 15, 1989 by the Administrative Security Department (DAS) (record of evidences to the application, volume II, evidence A35, pages 656, 657, 658 and 660); report of February 13, 1990 by the Administrative Security Department (DAS) (record of evidences to the application, volume II, evidence A35, pages 686, 710, and 711); affidavit by Federico Andreu Guzmán of January 19, 2007 (record of witness statements and expert reports, volume III, page 7512); and expansion of interrogatory statement by Alonso de Jesús Baquero Agudelo of August 3, 1995 before the Technical Investigative Corps (record of evidences to the brief containing pleadings and motions, volume VI, evidence 47, pages 3489 to 3491).

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215. The Court reiterates that, obviously, the very existence of a disciplinary procedure within the Procurator General's Office to look into cases of human rights violations has an important protective purpose and the corresponding results can be assessed to the extent that they contribute to clarifying the facts and establishing this type of responsibility. A disciplinary procedure can complement but not entirely substitute the function of the criminal courts in cases of grave human rights violations. [FN225]

[FN225] Cf. Case of the Ituango Massacres, supra note 15, para. 333; and Case of the Pueblo Bello Massacre, supra note 12, para. 203.

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d) Proceedings in the Contentious Administrative Courts

216. In this case, and as described in greater detail in the section on reparations (infra para. 239 and 241), the State granted compensation at the domestic level through contentious administrative proceedings and judicially certified settlement agreements. In this regard, the Court observes that the decisions adopted by the contentious administrative courts do not contain a statement on the State's responsibility for the violation of rights such as the rights to life and to

personal integrity, among other rights embodied in the Convention. Likewise, they do not address certain issues of rehabilitation, truth, justice and the rescue of the historical memory, or measures to guarantee non-repetition.

217. As has been indicated on other occasions, [FN226] when assessing the effectiveness of the domestic recourse provided by the national contentious administrative courts, the Court must decide whether the decisions effectively contributed to ending impunity, ensuring non-repetition of the harmful acts and guaranteeing the free and full exercise of the rights protected by the Convention.

[FN226] Cf. Case of the Mapiripán Massacres, supra note 12, para. 210. In the same sense, see Case of the Ituango Massacres, supra note 15, para. 338; and Case of the Pueblo Bello Massacre, supra note 12, para. 206.

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218. In establishing the State's international responsibility for the violation of the human rights embodied in Articles 8(1) and 25 of the American Convention, a substantial element of the dispute before the Court is not whether judgments were delivered or settlement agreements reached concerning the administrative or civil responsibility of a State body in relation to the violations committed to the detriment of the victims of human rights violations or their next of kin, but rather whether the domestic proceedings ensured full judicial access, pursuant to the standards set forth in the American Convention. [FN227]

[FN227] Cf. Case of the Mapiripán Massacres, supra note 12, para. 211. In the same sense, see Case of the Ituango Massacres, supra note 15, para. 339; and Case of the Pueblo Bello Massacre, supra note 12, para. 206.

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219. In the cases of the Ituango Massacres, the Pueblo Bello Massacre and the Mapiripán Massacre, all three against Colombia, the Court found that the comprehensive reparation of the violation of a right protected by the Convention cannot be reduced to the payment of compensation to the next of kin of the victim. [FN228] The Court indicated that the compensations established in the contentious administrative proceedings could be considered when establishing the pertinent reparations, "on condition that the decisions taken in those proceedings are considered res judicata and are reasonable, considering the circumstances of the case." [FN229]

[FN228] Cf. Case of the Mapiripán Massacres, supra note 12, para. 214. In the same sense, see Case of the Ituango Massacres, supra note 15, para. 339; and Case of the Pueblo Bello Massacre, supra note 12, para. 206

[FN229] Cf. Case of the Mapiripán Massacres, supra note 12, para. 214. In the same sense, see Case of the Ituango Massacres, supra note 15, para. 339; and Case of the Pueblo Bello Massacre, supra note 12, para. 206

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220. The Court has indicated that, in cases of human rights violations, the State has the duty to provide reparations. This duty implies that while the victims or their next of kin should have ample opportunity to seek just compensation under domestic law, the State's obligation cannot rest exclusively on their procedural initiative or on the submission of probative elements by private individuals. Thus, in the terms of the obligation to provide reparation that arises from a violation of the Convention (infra para. 226), the contentious administrative proceedings do not constitute per se an effective and adequate recourse to redress such violations comprehensively. [FN230]

[FN230] Cf. Case of the Ituango Massacres, supra note 15, para. 340; and Case of the Pueblo Bello Massacre, supra note 12, para. 209.

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221. Adequate redress, understood within the framework of the Convention, includes measures of rehabilitation and satisfaction and guarantees of non-repetition. The Court has indicated that recourse such as the action for direct reparation or the action for annulment and re-establishment of a right have a very limited scope and include some conditions of access that are not appropriate with regard to the reparation objectives established in the American Convention. The Court has indicated that the judgment of a judicial authority in a contentious administrative court rules on the fact that an unlawful damage has been produced, and not on the State's responsibility for failing to comply with human rights standards and obligations. [FN231]

[FN231] Cf. Case of the Massacres of Ituango, supra note 15, para. 341 and 342.

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222. In this case, the Court has evaluated the results achieved in these contentious administrative proceedings, which include some decisions that include reparations for pecuniary and non-pecuniary damages. These decisions will be taken into account when establishing the pertinent reparations for the violations of the Convention declared in this Judgment.

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223. The Court has established that the States are obligated to effectively guarantee the rights to life and personal integrity. Part of this obligation is the duty to investigate the alleged violations of these rights. This duty derives from Article 1(1) of the Convention in combination with the substantive right that must be protected or guaranteed. [FN232]

[FN232] Cf. Case of the Castro Castro Prison, para. 253; Case of Servellón García et al., supra note 3, para. 119; Case of Ximenes Lopes, supra note 3, para. 147; Case of the Ituango Massacres, supra note 7, para. 297; and Case of Baldeón García, supra note 21, para. 92.

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224. The Tribunal notes that, in cases of a violation of the right to life, the next of kin of the victims have the right to judicial access.

225. The Court concludes that the domestic procedures and proceedings have not constituted effective recourse of a character that could guarantee access to justice and the right to the truth, the investigation and punishment of those responsible, and the comprehensive reparation of the consequences of the violations. Based on the preceding findings, and on the State's partial acknowledgement of responsibility, the State is responsible for the violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of the three surviving victims and the next of kin of the deceased victims, as identified in the Appendix on victims of this Judgment, which, for these effects, forms part of the Judgment.

IX. REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION) [FN233]

[FN233] Article 63(1) of the Convention states that:
If 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 this right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted that breach of such a right or freedom be remedied and that fair compensation be paid to the injured party.
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226. It is a principle of International Law that any violation of an international obligation which causes damage gives rise to a duty to make adequate reparations. [FN234] The obligation to provide reparations is regulated in every aspect by International Law. [FN235] The Court has based its decisions on this matter upon Article 63(1) of the American Convention.

[FN234] Cf. Case of La Cantuta, supra note 8, para. 199; Case of the Miguel Castro Castro Prison, supra note 8, para. 413; and Case of Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 141.
[FN235] Cf. Case of La Cantuta, supra note 8, para. 200; Case of the Miguel Castro Castro Prison, supra note 8, para. 415; and Case of Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 143.
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227. In this case, the Court must consider whether "the partial Agreement on certain reparation measures" made between the State and the representatives on January 31, 2007 (supra para. 20), is compatible with the relevant provisions of the American Convention; whether it ensures the payment of just compensation to the victims' next of kin; and whether it provides redress for the various consequences of the human rights violations committed in this case. [FN236] The Court will also examine the claims that remain in dispute and shall determine the appropriate reparations.

[FN236] Cf. Case of Huilca Tecse, supra note 18, para. 90; Case of Durand and Ugarte. Reparations, supra note 18, para. 23; and Case of Barrios Altos. Reparations, supra note 18, para. 23.

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228. The Court will carry out this analysis in the context of the State's recognition of responsibility (supra para. 8 to 54) pursuant to the findings on the merits set forth and the violations of the Convention established in previous sections, and in accordance with the guidelines laid out in the Court's jurisprudence regarding the nature and scope of the obligation to make reparations. [FN237]

[FN237] Cf. Case of La Cantuta, supra note 8, para. 200 to 203; Case of the Miguel Castro Castro Prison, supra note 8, para. 415 to 417; and Case of the Pueblo Bello Massacre, supra note 12, para. 228 to 230.

A) INJURED PARTY

229. The Court shall now proceed to determine which persons should be considered "injured parties" under Article 63(1) of the American Convention, and who are consequently entitled to the reparations to be set by the Tribunal.

230. In Colombia's reply brief, in the section on Reparations and under the title "Injured Party", Colombia requested that the Court, firstly, "dismiss the claims" of the victims' next of kin who "went directly to the Inter-American Court […] without first pursuing legal action in the domestic courts, despite having the opportunity to do so." Secondly, the State requested that the Court exclude "as injured parties surviving victims and all the next of kin who […] received some kind of compensation under domestic law for the pecuniary and non-pecuniary damages caused", and indicated that these persons "[were] awarded compensation by the contentious administrative courts and in the settlement proceedings" (supra para. 17).

231. The representatives stated that "the victims and next of kin in this case who did not receive compensation at the domestic level are entitled to fair compensation just as the victims who have appeared before this Court in the past under similar circumstances".

232. This Court has already expressed its view regarding the State's first argument (supra para. 46). With regards to the State's second argument (supra para. 30), the Court observes that the argument refers to the granting of compensation rather than the determination of the injured parties in this case. In other words, the State asks that this Court not set compensation amount in favor of the individuals who were awarded compensation at the domestic level.

233. In this regard, the Court notes that Article 63(1) of the Convention provides 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 or her right or freedom that was violated". This means that anyone who has been deprived of a right or freedom established in the Convention is an injured party. Once the identity of the persons injured by the events in the case has been determined the Court "shall also rule, if appropriate, […] that fair compensation be paid" to those persons, in fine, under Article 63(1) of the Convention. It is in this second step, in deciding whether any compensation must be awarded, that the Court shall take into account compensation granted by the State. (infra para. 239, 245 to 250, 254 to 257, and 265 to 273).

234. In this case, the Court considers Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, to be injured parties in their character as victims of the violations of Articles 4, 5 and 7 of the Convention in relation to Article 1(1) thereof (supra para. 140); the last three individuals listed above are also victims of violations of Articles 8 and 25 of the Convention, in relation to Article 1(1) of the same (supra para. 225). The next of kin to these victims, identified in the Appendix to this Judgment, are also injured parties and victims of the violation of the rights established in Articles 5, 8(1) and 25 of the American Convention, in relation to Article 1(1) of the same (supra para. 141 and 225).

235. These individuals are entitled to the reparations that the Court establishes, due to their status as victims of the violations mentioned above. The victims' next of kin shall also be entitled to all such reparations as the Court determines due to their status as successors of the twelve deceased victims.

236. The Court notes that in the list of beneficiaries submitted by the representatives in their written closing arguments, the representatives included Franey Amparo Guasca Vargas and Orlando Guasca Vargas as next of kin of deceased victim Benhur Iván Guasca Castro. The Court will not consider Franey Amparo Guasca Vargas or Orlando Guasca Vargas as an injured party because: they were not timely included in the proceedings; no explanation was presented to justify their late inclusion; they did not indicate their relationship to the deceased victim; and they did not attach proof of their identity or affectionate relationship with the victim.

237. With regard to the distribution of indemnities to the family members of the deceased victims, for material and immaterial injuries, the Court, in accordance with criteria used in other cases, [FN238] decides that it will be done in the following manner:

a) fifty percent (50%) of the compensation shall be distributed equally among the victim's children;
b) fifty percent (50%) of the compensation shall be paid to the victim's spouse or permanent companion at the time of the victim's death;
c) if a victim did not have any children, or spouse or permanent companion, fifty percent (50%) of the compensation award shall pass to the victim's parents equally. If one of the parents

is dead, his or her share will pass to the other parent. The remaining fifty percent (50%) shall be distributed equally among the victim's siblings; and

d) in the absence of any relatives in any of the categories defined in the sections above, any amounts to which they would have been entitled shall be distributed to the rest in proportion to their entitlements.

[FN238] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 421; Case of Goiburú et al., supra note 11, para. 148; and Case of Montero Aranguren et al. (Detention Center of Catia). Judgment of July 5, 2006. Series C No. 150, para. 122.

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238. As for the victims' next of kin entitled to the compensation set forth herein who have died or die before collecting their compensation, it must be delivered to the successor in conformity with the applicable internal law.

B) COMPENSATION

239. The Court will now determine the appropriateness of granting monetary reparations and the appropriate amounts to be awarded in this case. To this end it will take into account that the State has awarded compensation at the domestic level in administrative proceedings [FN239] and in court-approved settlement agreements, [FN240] as well as the fact that under the partial agreement on reparations the State agreed to pay compensation. [FN241]

[FN239] The State granted an indemnity for "moral damages", "lost earnings" and "future earnings" to the next of kin of eleven of the twelve deceased victims and to the surviving victim Arturo Salgado Garzón. The State did not order an indemnity for lost earnings with regard to all of the victims. The orders that granted the dispersal of such payments were issued in 1996 and 1997 by the Ministries of Justice and Defense. The next of kin of the deceased victim Arnulfo Mejía Duarte did not participate in the contentious administrative process.

[FN240] Agreed to by the "the Nation – Ministry of Interior and Justice – Ministry of National Defense" and two of the surviving victims and their next of kin in April 2006 and judicially approved by the Contentious Administrative Court of Santander on September 8, 2006 (record of supervening evidence provided by the State, November 8, 2006, pages 6807 to 6827).

[FN241] The State provided an indemnity for "reasons of injury" in favor of 20 siblings of 4 of the deceased victims (Mariela Morales Caro, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz and Arnulfo Mejía Duarte). This Court understands that the agreed to indemnities take into account as much material injury as immaterial injury caused to said families. At the same time, this agreement manifests that those 20 families "waive their claim made before the Inter-American Court in relation to the indemnification for injury", but "do not waive the related topic of the eventual possibility that they could be awarded an indemnity in their favor as successors of the direct victims."

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240. The Court approves the abovementioned partial agreement on reparations as to the compensation awards contained in it, for they constitute a means of adequately repairing the consequences of the violations established in this Judgment, are in line with this Court's jurisprudence, and represent a step forward by Colombia towards complying with the obligation to make reparations in accordance with Article 63(1) of the Convention. This Court understands that the twenty siblings of the victims in whose favor the compensation is awarded have received monetary reparations as victims of the violations of the Convention established in this Judgment. Therefore, the Court establishes that the State must make the payments of the agreed upon Compensation, in the manner established in the agreement, within one year. The twenty siblings of the victims will be able to collect the amounts as successors to the deceased victims.

241. In ruling on reparations, the Court takes into account that surviving victims Wilson Humberto Mantilla Castillo and Manuel Libardo Díaz Navas and their next of kin entered into settlement agreements with the State, which provided indemnities in their favor and contained a clause under which the beneficiaries agreed to waive any claims or petitions before the Inter-American System for the Protection of Human Rights. Such victims and their next of kin did not grant a power of attorney before the Court, and neither the Commission nor the representatives have claimed damages on their behalf.

242. In addition, the State alleges that, as a result of the proceedings conducted in the contentious administrative courts, "the obligation to compensate the victims who went to court and several of their next of kin has already been fulfilled", regarding both pecuniary and non-pecuniary damages. The State alleges that "the factors and guidelines used to settle the reparations at the time the administrative court delivered its judgment […] (1995–199[7]), are the same as the ones the Inter-American Court relied upon in its own judgments]". According to the State, "since the compensation amounts paid to the victims are in keeping with the Inter-American Court's guidelines […], it is appropriate to find [...] that economic reparations have been fully made or, at any rate, [that] the Colombian State only has the duty to pay the remainder."

243. The Commission and the representatives highlighted the differences "not only in terms of the amount of the awards but also regarding the types of harm redressed, and the procedures for calculating the damages" that exist between Colombian law and the Inter-American System.

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B.1) Pecuniary Damage

244. In its jurisprudence, the Court has developed the concept of pecuniary damage and the situations in which it must be redressed. [FN242]

[FN242] Cf. inter alia, Case of La Cantuta, supra note 8, para. 213; Case of the Miguel Castro Castro Prison, supra note 8, para. 423; and Case of Vargas Areco, supra note 8, para. 146.

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245. In this case, the Court notes that, in the contentious administrative proceedings, the State has awarded damages for loss of income [lucro cesante] to twelve children and seven spouses or partners [FN243] of eight of the deceased victims in accordance with the guidelines set out by its domestic courts (supra para. 239). The Tribunal recognizes and values the efforts by Colombia with regard to the duty to provide reparations.

[FN243] The children and spouses or companions of the deceased victims that received compensation for lost income were: Nicolás Gutiérrez Morales and Sergio Andrés Gutiérrez Morales, children of Mariela Morales Caro; Esperanza Uribe Mantilla, spouse, and Pablo Andrés Beltrán Uribe and Alejandra Maria Beltrán Uribe, children of Pablo Antonio Beltrán Palomino; Hilda María Castellanos, spouse of Virgilio Hernández Serrano; Paola Martínez Ortiz, companion, and Daniel Ricardo Hernández Martínez and Julián Roberto Hernández Martínez, children of Luis Orlando Hernández Muñoz; Luz Nelly Carvajal Londoño, spouse, and Angie Catalina Monroy Carvajal, daughter of Yul Germán Monroy Ramírez; Mariela Rosas Lozano, spouse, and Marlon Andrés Vesga Rosas, son of Gabriel Enrique Vesga Fonseca; Blanca Herrera Suárez, companion, and Germán Vargas Herrera and Erika Vargas Herrera, children of Samuel Vargas Páez; and Luz Marina Poveda León, spouse, and Sandra Paola Morales Póveda and Cindy Vanesa Morales Póveda, daughters of César Augusto Morales Cepeda.

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246. The Court notes, however, that the formula used to calculate and distribute an award for loss of income in the domestic proceedings is distinct from the formula used by this Tribunal. This Court finds that the award for lost income includes income that the victim would have received during his or her remaining life expectancy. That amount, therefore, is considered the property of the deceased victim, but is delivered to his or her next of kin. For these reasons, the Court will determine the appropriate amounts that it deems pertinent to order.

247. The Court is satisfied that the next of kin of deceased victims Carlos Fernando Castillo Zapata, Benhur Iván Guasca Castro and Orlando Morales Cárdenas file an administrative claim but were not awarded lost earnings, and the next of kin of Arnulfo Mejía Duarte did not bring a contentious administrative claim. In this regard, and in line with its jurisprudence, the Court deems it proper to award lost earnings to each of the four deceased victims mentioned above.

248. As it has done in other cases, [FN244] the Tribunal determines the following awards in equity for the loss of income of the twelve deceased victims. In doing so, the Court takes into account such aspects as the victim's occupation and corresponding remuneration, the victim's age and life expectancy, as well as the award granted him or her at the domestic level (supra para. 245):

Deceased Victims	Compensation for the loss of income
1. Mariela Morales Caro	US$ 280,000.00
2. Pablo Antonio Beltrán Palomino	US$ 265,000.00
3. Virgilio Hernández Serrano	US$ 230,000.00
4. Carlos Fernando Castillo Zapata	US$ 230,000.00
5. Luis Orlando Hernández Muñoz	US$ 160,000.00

6. Yul Germán Monroy Ramírez	US$ 160,000.00
7. Gabriel Enrique Vesga Fonseca	US$ 150,000.00
8. Cesar Augusto Morales Cepeda	US$ 150,000.00
9. Benhur Iván Guasca Castro	US$ 150,000.00
10. Orlando Morales Cárdenas	US$ 150,000.00
11. Arnulfo Mejía Duarte	US$ 100,000.00
12. Samuel Vargas Páez	US$ 100,000.00

[FN244] Cf. Case of the Ituango Massacres, supra note 15, para. 373; Case of the Pueblo Bello Massacre, supra note 12, para. 248; and Case of Blanco Romero et al., supra note 119, para. 80.

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249. The awards calculated in the preceding paragraph should be distributed among the next of kin of the deceased victims, in conformity with the criteria in paragraph 237 of the present Judgment. The State should effectuate the payment of these amounts within a period of one year, counted from the time of service of the present Judgment upon the State.

250. Likewise, at the moment of distributing the reparations ordered by this Court in paragraph 248, the State may discount, for each family, the amount granted to that family in the domestic contentious administrative proceedings for a loss of income. In the event that the award ordered in those internal proceedings is larger than the award ordered by this Tribunal in the present, the State many not demand the return of the difference from the victims. [FN245]

[FN245] Cf. Case of the Ituango Massacres, supra note 15, para. 376.

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251. After analyzing the information submitted by the parties, the facts in the case and its own jurisprudence [FN246], the Court notes that even though no receipts have been produced, it must be presumed that the relatives of the twelve deceased victims incurred various expenses in connection with their deaths. Furthermore, the Court notes that none of the victims' relatives received any compensation for the expenses incurred after and as a consequence of the deaths of their loved ones. Consequently, the Court deems it proper to award on equitable grounds the amount of US$2,000.00 (two thousand United States Dollars or its equivalent in Colombian currency) as Compensation for material damages to each of the twelve deceased victims. This amount must be delivered to the family members of the twelve deceased victims in the following mutually exclusive order: spouse or companion, and if there is none, it must be delivered to the parents, and in the absence of parents, to the children, and in the absence of children, the siblings of the victims. The State must make such payments within one year, counting from the date of service of the present Judgment upon the State.

[FN246] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 428; Case of Servellón García et al., supra note 19, para. 177; and Case of Ximenes Lopes, supra note 24, para. 226.

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252. At the same time, the Court sets out in equity, the quantity of U.S. $2,500.00 (two thousand and five hundred United States Dollars or its equivalent in Colombian currency) to the surviving victim Arturo Salgado Garzón for medical expenses that he incurred to attend to the injuries suffered during the massacre.

B.2) Non-Pecuniary Damage

253. The Court must now determine the compensation for non-pecuniary damage pursuant to the Court's jurisprudence. [FN247]

[FN247] Cf. Case of La Cantuta, supra note 8, para. 216; Case of the Miguel Castro Castro Prison, supra note 8, para. 430; and Case of Vargas Areco, supra note 8, para. 149.

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254. In this regard, the representatives of the victims and their relatives stated that they "are not claiming additional compensation for moral damage on behalf of the victims' relatives who have been awarded compensation in the domestic courts, as [they] consider such awards to be generally adequate in line with the guidelines established in the Inter-American system". Notwithstanding the foregoing, they stated that "[the] only exception concerns […] the permanent companions of Luis Orlando Hernández Muñoz […] and Samuel Vargas Páez [i.e. Ms. Paola Martínez Ortiz and Ms. Blanca Herrera Suárez, respectively,] to whom the Council of State granted only 80% of the amount they would have received had they been formally married to the victims." As a result, the representatives requested an additional non-pecuniary damages award for them.

255. The representatives requested "compensation for non-pecuniary damages for the twelve deceased victims of the massacre, the surviving victim Arturo Salgado, and the next of kin of the victims who neither received any compensation for this type of damage in the contentious administrative courts nor were mentioned in section IV of the partial agreement on reparations".

256. As the Court has held in similar cases, [FN248] the non-pecuniary damage sustained by Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas is evident, since it is human nature that a person subjected to arbitrary detention and extrajudicial execution suffers deep pain, anguish, terror, impotence and insecurity. As a result, these damages need not be proved. Moreover, surviving victim Arturo Salgado documented the anguish and suffering endured by the victims in the public hearing held before the Inter-American Court [FN249].

[FN248] Cf. Case of La Cantuta, supra note 8, para. 217; Case of Goiburú et al., supra note 11, para. 157; and Case of the Ituango Massacres, supra note 15, para. 384.

[FN249] Cf. witness testimony offered by Arturo Salgado Garzón in the public hearing before the Inter-American Court held January 31 and February 1 of 2007.
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257. The Court observes that the domestic proceedings did not award compensation for the suffering of these deceased victims. Consequently, it is appropriate for the Court to order an award.

258. With regards to the next of kin of the twelve executed victims and the next of kin of the surviving victim Arturo Salgado Garzón, it has been established that they are victims of the violation of Articles 5, 8 and 25 of the Convention, in accordance with the terms of paragraphs 141 and 225 of the present Judgment.

259. The testimony of victim Arturo Salgado and the victims' next of kin in these proceedings demonstrate the broad effects that the events of the Rochela Massacre had on various aspects of their lives, such as their mental and physical health, family relations, finances and work.

260. With regards to the impact on professional life and security, Mr. Virgilio Alfonso Hernández Castellano, son of a deceased victim, stated that while serving as a prosecutor he was accused of "investigating members of the public force out of revenge, [because he had a] vindictive or inquisitive fury", and thus had to "go into exile [for] a six-month period and later for two years] as a result of the threats [he] received". Later on, he had to leave his position as a prosecutor. In his account of one of these threats, he stated that "[he] was reminded that he was the son of one of the victims of The Rochela[, …] and was told to step out of the investigations against members of paramilitary groups" "or else they would finish off [his] family tree".

261. The health of several relatives of the executed victims was severely affected. For example, one month after the massacre, Mr. Gilberto de Jesús Morales Téllez "developed a severe Reactive Depression as a result of the murder of his daughter Mariela Morales Caro". This was followed by a peptic ulcer that caused upper gastrointestinal bleeding which in turn brought on "pulmonary aspiration and hypovolemic shock". According to a medical certificate, "[his] clinical condition deteriorated and Mr. Morales Téllez developed a multiple organ dysfunction syndrome that led to his death on April 16, 1989," [FN250] just three months after the massacre.

[FN250] Cf. medical report offered by Diego León Severiche Hernández, internist, pulmonologist, and intensive care specialist; and the death certificate of Mr. Gilberto de Jesús Morales Téllez issued on April 17, 1989 (record of evidences to the brief containing pleadings and motions, volume I, pages 2175 to 2177).
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262. Relatives of most of the victims experienced severe financial difficulties and a deterioration in their living standards, since the majority of the victims of the massacre were the breadwinners. The spouses and partners of the victims were faced with the responsibility of raising their children. The children of some of the deceased victims were minors at the time of

the events. [FN251] For instance, Cindy Vanessa Morales Póveda was seventeen days old, and her sister, Sandra Paola, was one year and ten months old [FN252] when their father Cesar Augusto Morales Cepeda was murdered. Those children grew up without a father figure by their side.

[FN251] Children of the deceased victims that were minors at the time of the massacre: Marlon Andrés Vesga Rosas, son of Gabriel Enrique Vesga Fonseca, was 2 months old (record of evidences to the brief containing pleadings and motions, volume II, evidence 8, page 2549); Carlos Andrés Mejía Duarte, son of Arnulfo Mejía Duarte, was 5 months old (record of witness statements and expert reports, page 6925); Anggie Catalina Monroy Ramírez, daughter of Yul Germán Monroy Ramírez, was 1 year and 1 month old (record of evidences to the brief containing pleadings and motions, volume III, evidence 12, page 2693); Daniel Ricardo Hernández Martínez and Julián Roberto Hernández Martínez, children of Luis Orlando Hernández Muñoz, were 10 and 4 years old, respectively (record of evidences to the brief containing pleadings and motions, volume II, evidence 6, pages 2506 and 2481); Pablo Andrés Beltrán Uribe and Alejandra María Beltrán Uribe, children of Pablo Antonio Beltrán Palomino, were 10 and 8 years old, respectively (record of evidences to the brief containing pleadings and motions, volume II, evidence 3, pages 2288 y 2289); and Germán Vargas Herrera and Erica Esmeralda Vargas Herrera, children of Samuel Vargas Páez, were 15 and 14 years old, respectively (record of evidences to the brief containing pleadings and motions, volume III, evidence 13, pages 2703 and 2704).
[FN252] Cf. birth Records of Sandra Paola Morales Póveda and Cindy Vanessa Morales Póveda (record of evidences to the brief containing pleadings and motions, volume III, evidence 11, pages 2651 and 2652).
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263. In particular, the Court notes the situation of Mariela Morales Caro. Her murder caused the disintegration of the family. At the time of the massacre, Mariela was breastfeeding her son Nicolás Gutiérrez Morales, who was 8 months and 24 days old. Her other son, Sergio Andrés Gutiérrez Morales, was one year and 8 months old. [FN253] Her partner Olegario Gutiérrez Cruz stated to this Court that

after the massacre, it was all over, […] the idea of having our kids with us, all of it was over. The kids were taken to different homes and, naturally, they were not raised like brothers but like cousins […] [FN254].

[FN253] Cf. birth records of Nicolás Gutiérrez Morales and of Sergio Andrés Gutiérrez Morales (record of evidences to the brief containing pleadings and motions, volume III, evidence 11, pages 2165 and 2168).
[FN254] Cf. testimony offered by Olegario Gutiérrez Cruz in the public hearing before the Inter-American Court held on January 31 and February 1, 2007.

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264. International jurisprudence has repeatedly established that a judgment constitutes per se a form of reparation [FN255]. However, in view of the circumstances of the instant case, the suffering that the violations have caused the victims and their next of kin, the changes in the standards of living of the surviving victims and the next of kin of all the victims, and in light of the other non-pecuniary consequences they bore, the Court deems it appropriate to award compensation for moral damages, assessed on equitable grounds. [FN256]

[FN255] Cf. Case of La Cantuta, supra note 8, para. 219; Case of the Miguel Castro Castro Prison, supra note 8, para. 431; and Case of Dismissed Congressional Employees (Aguado Alfaro et al.), supra note 16, para. 147.

[FN256] Cf. Case of La Cantuta, supra note 8, para. 219; Case of the Miguel Castro Castro Prison, supra note 8, para. 431; and Case of Vargas Areco, supra note 8, para. 150.

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265. In the instant case, the Court notes that the State awarded compensation for moral damages in the contentious administrative proceedings, in accordance with the guidelines established by domestic law to surviving victim Arturo Salgado Garzón, as well as to eighteen children, seven spouses or companions, two mothers, three fathers, six sisters and nine brothers [FN257] of the eleven deceased victims.

[FN257] The next of kin of the eleven deceased victims that received compensation for non-pecuniary damage were: Nicolás Gutiérrez Morales and Sergio Andrés Gutiérrez Morales, children of Mariela Morales Caro; Hilda María Castellanos, spouse, and María Azucena Hernández Castellanos, Aure Lissy Hernández Castellanos, Wilfredo Hernández Castellanos, Jackeline Hernández Castellanos and Virgilio Alfonso Hernández Castellanos, children, and Margarita María Hernández Serrano, Luis Alfonso Hernández Serrano, Norberto Hernández Serrano, Jesús Antonio Hernández Serrano and Bertha Maria Hernández Serrano, brothers and sisters of Virgilio Hernández Serrano; Elizabeth Zapata de Castillo, mother, and Alonso Castillo Mayoral, father of Carlos Fernando Castillo Zapata; Luz Marina Poveda León, spouse, and Sandra Paola Morales Póveda and Cindy Vanessa Morales Póveda, daughters of César Augusto Morales Cepeda; Mariela Rosas Lozano, spouse, and Marlon Andrés Vesga Rosas, son of Gabriel Enrique Vesga Fonseca; Paola Martínez Ortiz, companion, and Daniel Ricardo Hernández Martínez and Julián Roberto Hernández Martínez, sons of Luis Orlando Hernández Muñoz; José Patrocinio Morales, father, and José Roberto Morales Cárdenas, José Gustavo Morales Cárdenas, Luz Marina Morales Cárdenas, María Cecilia Morales Cárdenas and Jaime Morales Cárdenas, brothers and sisters of Orlando Morales Cárdenas; Luís Elias Guasca Barahona, father, Carmen Julia Castro de Guasca, mother, and María Esperanza Guasca Castro, Olimpo Luís Alirio Guasca Castro, Sócrates Vesalio Guasca Castro, Aristóteles Onásis Guasca Castro and Suevia Faryde Guasca Castro, brothers and sisters of Benhur Guasca Castro; Blanca Herrera Suárez, companion, and Germán Vargas Herrera, Erika Esmeralda Vargas Herrera and Carlos Arturo Vargas Herrera, brothers and sister of Samuel Vargas Páez; Esperanza Uribe Mantilla, spouse, and Pablo Andrés Beltrán Uribe and Alejandra Maria Beltrán Uribe, son and

daughter of Pablo Antonio Beltrán Palomino; and Luz Nelly Carvajal Londoño, spouse, and Anggie Catalina Monroy Carvajal, daughter of Yul Germán Monroy Ramírez.
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266. In this regard, the Court appreciates the compensation granted in the contentious administrative proceedings. Taking into consideration the representatives' statement that "these damages awards were generally adequate", the Tribunal considers that the State has compensated the next of kin for the non-pecuniary damage sustained as a result of the events of the Rochela Massacre, except for surviving victim Arturo Salgado Garzón, and for Ms. Paola Martínez Ortiz and Ms. Blanca Herrera Suárez, companions of two of the deceased victims.

267. Given the preceding paragraphs, it is appropriate for the Court to determine compensation for non-pecuniary damages suffered by: the three abovementioned individuals who did not receive adequate reparation in the contentious administrative proceedings (supra para. 266); the twelve deceased victims, since they did not received an award in the domestic proceedings for their own suffering; and those next of kin declared victims who did not receive compensation at the domestic level and were not included in the partial agreement on reparations.

268. First, with regard to Ms. Paola Martínez Ortiz and Ms. Blanca Herrera Suárez, permanent companions of the victims Luis Orlando Hernández Muñoz and Samuel Vargas Páez, respectively, they received less compensation in the domestic proceedings than that granted to the wives married to other victims. In accordance with this Court's jurisprudence and Article 2(15) of its Rules of Procedure, it is necessary to grant them further compensation for moral damages in order to equalize the awards granted, inasmuch as this rule affords equal treatment to spouses and permanent companions. Therefore, the Court fixes, in equity, an amount of US$ 30,000.00 each (thirty thousand United States Dollars or its equivalent in Colombian currency) to Ms. Paola Martínez Ortiz and Blanca Herrera Suárez.

269. Secondly, with regard to the surviving victim Arturo Salgado Garzón, he has proven [FN258] before this Tribunal the severe physical and psychological suffering that he endured during and after the massacre, for which the Court must award compensation in accordance with the injury caused. Therefore, the Court fixes, in equity, the quantity of US$ 100,000.00 (one hundred thousand United States Dollars or its equivalent in Colombian currency) to Arturo Salgado Garzón.

[FN258] Cf. testimony offered by Arturo Salgado Garzón in the public hearing before the Inter-American Court held January 31 and February 1, 2007; and expert report rendered by expert witness Felicitas Treue (record of witness statements and expert reports, pages 6914 to 6916).
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270. At the moment of distribution of the reparations ordered by this Court in the two previous paragraphs, the State may discount the amounts that it ordered in the domestic contentious administrative proceedings for "moral damages." [FN259]

[FN259] Cf. Case of the Ituango Massacres, supra note 15, para. 376.

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271. Thirdly, taking into account the various violations established by the Court in this Judgment, the Court will, in equity, set the compensation awards for non-pecuniary damages sustained by the twelve deceased victims and surviving victim Arturo Salgado Garzón, and the next of kin of these victims, who received no compensation in the domestic proceedings and for whom the agreement on reparations made no provision. In determining such amounts, the Court will take into account the fact that:

a) the victims were illegally and arbitrarily detained and extrajudicially executed while performing their duties as government agents in search of truth and justice;
b) the victims were in unsafe conditions inasmuch as the State failed to provide them with adequate protection to carry out their investigation;
c) the combination of the harassment, acts of aggression, and terror to which the victims were subjected, from the moment in which the paramilitaries confronted them until the execution of the massacre, as well as the way in which they were killed, that is to say, captured and bound by the paramilitaries, and subjected to premeditated murder, caused extreme psychological and emotional suffering by the victims;
d) after the massacre, surviving victim Arturo Salgado was tied up and had to wait for several hours for help and medical assistance;
e) the physical and mental health of the next of kin of the victims, as well as their economic and occupational wellbeing, were gravely affected by the massacre; and
f) eighteen years after the events of this case, an effective investigation has not been undertaken that would permit the identification of all those responsible.

272. Therefore, in application of the preceding paragraph, the Court orders compensation for the following individuals for non-pecuniary damages, in conformity with the amounts established in paragraph 273 of the present Judgment:

a) Mariela Morales Caro; Olegario Gutiérrez Cruz (companion); Mariela Caro de Morales (mother); and Gilberto Morales Téllez (father); [FN260]
b) Pablo Antonio Beltrán Palomino; and Segundo Rubén Beltrán Palomino (brother);
c) Virgilio Hernández Serrano;
d) Carlos Fernando Castillo Zapata;
e) Luis Orlando Hernández Muñoz; and Rosinda Muñoz de Hernández (mother);
f) Yul Germán Monroy Ramírez; and Josefa Ramírez de Monroy (mother);
g) Benhur Iván Guasca Castro;
h) Gabriel Enrique Vesga Fonseca; Eduvina Fonseca de Vesga (mother); Gabriel Vesga Sanabria (father); Nubia Vesga Fonseca (sister); and Matilde Vesga Fonseca (sister);
i) Orlando Morales Cárdenas; Ignacio Morales Cárdenas (brother); Alfonso Morales Cárdenas (brother); María Inés Morales de Porras (sister); and María Elena Morales de Martínez (sister);

j) César Augusto Morales Cepeda; María Antonia Cepeda de Morales (mother); Isaías Morales Cruz (father); María Carmenza Morales Cepeda (sister); Luz Mireya Morales Cepeda (sister); and Paola Andrea Morales Camacho (sister);
k) Arnulfo Mejía Duarte; Carlos Andrés Mejía Ferreira (son); Elvia Ferreira Usech (spouse); Isolina Duarte Gualdrón (mother); Roberto Mejía Gutiérrez (father); and Roberto Carlos Mejía Carreño (brother);
l) Samuel Vargas Páez; and Jonathan Esteven Castillo Vargas (grandson); and
m) the next of kin of Arturo Salgado Garzón: Luz Ángela Salgado Bolaños (daughter); Fanny Esperanza Salgado Bolaños (daughter); Mario Arturo Salgado Bolaños (son); Deycci Marcela Salgado Bolaños (daughter); María Luz Bolaños de Salgado (spouse); Helena Garzón viuda de Salgado (mother); José Álvaro Salgado Garzón (brother); Rosaura Salgado Garzón (sister); and María Sara Salgado de Garzón (sister).

[FN260] The representatives did not request any compensation for Gilberto Morales Téllez; however, the proven record identifies his suffering as a consequence of the death of his daughter Mariela Morales Caro. Cf. medical report rendered by Diego León Severiche Hernández, internist, pulmonologist and intensive care specialist (record of evidences to the brief containing pleadings and motions, volume I, pages 2175 and 2176) and the expert report rendered by Felicitas Treue (record of witness statements and expert reports, pages 6910 to 6989).

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273. The Court, in equity, orders compensation in the following amounts for the non-pecuniary damages suffered by the individuals indicated in the above paragraph:

a) for each of the twelve deceased victims, the Court sets the amount of US$ 100,000.00 (one hundred thousand United States Dollars or its equivalent in Colombian currency);
b) with regards to the next of kin of the declared victims, the Court considers that the injury sustained must be redressed through the payment of the amounts below:

i) US$ 70,000.00 (seventy thousand United States Dollars or its equivalent in Colombian currency) for each son or daughter;
ii) US$ 70,000.00 (seventy thousand United States Dollars or its equivalent in Colombian currency) for the grandson of deceased victim Samuel Vargas Páez;
iii) US$ 70,000.00 (seventy thousand United States Dollars or its equivalent in Colombian currency) for each spouse or permanent companion;
iv) US$ 70,000.00 (seventy thousand United States Dollars or its equivalent in Colombian currency) for each father and mother; and
v) US$ 15,000.00 (fifteen thousand United States Dollars or its equivalent in Colombian currency) for each brother and sister.

274. The State shall pay this compensation for non-pecuniary damages within one year from the date of service of this Judgment upon the State.

C) MEASURES OF SATISFACTION AND NON-REPETITION GUARANTEES

275. In this section, the Court will order measures of satisfaction aimed to redress non-pecuniary damage, and will order measures to guarantee non-repetition. These measures have a public character or impact.

276. First, the Court will analyze whether the measures of this nature which were provided in the partial agreement on reparations (supra para. 20 to 22, 53 and 227) are compatible with the relevant provisions of the American Convention and the Court's jurisprudence. Then, the Court will determine the appropriateness of ordering other measures of satisfaction and non-repetition guarantees, taking into account the issues that remain in dispute between the parties.

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277. Under the partial agreement on reparations, the State undertook to "develop and comply with the following measures of reparation, as measures of satisfaction to the victims and relatives, and to fulfill the obligation of non-repetition with regard to the victims, their relatives and society as a whole":

I. As regards honoring the memory of the victims

1. As a measure of apology to honor the memory of the victims, a plaque with the date of the events and the names of the victims will be placed at the Courthouse of San Gil municipality, Santander department. Likewise, a photographic gallery of the victims will be installed in a visible and dignified place, with prior authorization from their representatives.
Following the publication of the Inter-American Court's Judgment, the ceremony in which the plaque is placed and the photo gallery is revealed in the Courthouses of San Gil will be broadcast on the official channel with nationwide coverage, in the space assigned to the Superior Council of the Judicature [Consejo Superior de la Judicatura], with prior publicity through the state agencies' websites and by all such media as are available to the victims' representatives, so that society as a whole knows the truth.
2. A plaque with the date of the events and the names of the victims shall be placed in Paloquemao judicial complex in the city of Bogotá. The manner and place of this ceremony in which the plaque is to be fixed shall be agreed upon between the State and the representatives.
3. With regard to the existing commemorative plaque of the [L]a Rochela Massacre, its text shall be modified by mutual consent between the representatives and the Vice-president of the Republic. The National Office of the Attorney General shall relocate such plaque to a site, previously agreed upon with the representatives, within the city hall of Ciudad Salitre.
4. The television program of the judicial branch, which has nationwide coverage, shall report on the events of The Rochela Massacre, the State's partial recognition of responsibility, the Inter-American Court's decision, and in general, about all such aspects as are necessary to honor the memory of the victims. In addition, interviews will be made with some of the victims and relatives based upon prior selection and with their consultation.
5. A one time diploma course on Human Rights shall be established at the "Superior School of Public Administration" [Escuela Superior de Administración Pública] – ESAP, which will include the study of the case of the [L]a Rochela Massacre.
6. A scholarship shall be established for a specialization in human rights at the "Superior School of Public Administration" on a permanent basis, if possible, for members of the judiciary

who are interested in furthering their education in human rights. The scholarship shall be named so as to evoke the memory of the victims of the [L]a Rochela Massacre, by mutual consent between the State and the representatives.
7. The Presidential Human Rights Program – Office of the Human Rights Observer [Observatorio de Derechos Humanos], shall issue a publication that deals with the events of the Rochela Massacre, in accordance with the Inter-American Court's Judgment. Furthermore, the publication shall include the reparation measures that the Court in its Judgment establishes to have been adopted by the State of Colombia and those it orders in its own Judgment.
8. The Colombian State undertakes a best efforts obligation to request the Superior Council of the Judicature that the Courthouse of the municipality of San Gil be given a name that evokes the memory of the victims in this case. If this provision is approved by the Superior Council of the Judicature, such name shall be agreed upon with the representatives.

II. With regard to the publication of the Inter-American Court's Judgment.

1. The State shall publish in the print edition of a widely circulated national newspaper, a full-page notice with the summary of the key elements in the instant case pursuant to the Inter-American Court's Judgment. The text of the summary and the manner of publication shall be agreed to by the victims' representatives. The State shall notify the representatives prior to the publication date, so that they can review and disseminate it to society as a whole.
2. The State, through a high-ranking authority, shall refer the Court's Judgment in the instant case to the National Reparations and Reconciliation Commission. Furthermore, through a high-ranking authority, it shall send a letter to the commission respectfully requesting that, within the scope of its powers, it consider including the Rochela Massacre in its reports on paramilitarism and using the Inter-American Court's Judgment in this case as one of its formal sources.

III. Concerning injury to the life projects of the victims and their next of kin

1. As a best efforts obligation, the Ministry of Education, with the support of the Presidential Program on Human Rights and International Humanitarian Law, shall continue to provide educational assistance (scholarships) for the victims' next of kin for state or private, secondary, technical and higher education institutions in Colombia. The victims' representatives shall submit, within one month, the list of the victims' next of kin who wish to obtain such scholarships, which shall contain the following details: 1. Applicant's full name; 2. Education level achieved as well as the program, course of studies, further education program or course he or she intends to undertake; 3. Three (3) options of possible educational institutions where he or she intends to undertake studies.
2. The Colombian Prosecutor's Office shall continue to offer job vacancies for the victims and their next of kin, to the extent that they meet the qualification standards required to occupy the positions pursuant to constitutional, administrative and statutory guidelines.

278. The representatives and the State agreed that "[t]he reparation measures undertaken shall be carried out respecting the jurisdictional limits within the Colombian State, and in compliance with the constitutional, statutory and administrative requirements for their execution".

279. Furthermore, the parties agreed that Colombia would begin to implement these measures "from the moment of signing the partial agreement on reparations, with regard to those measures whose execution is not dependent on the Court's Judgment".

280. The Court notes that the measures seek to redress the damage caused to the victims and their next of kin, preserve the memory of the victims, and prevent the recurrence of the events of the instant case. In addition, the Court observes that the parties have agreed that the measures, where so required, be adequately publicized, and that some specific aspects of the measures be discussed between the State and the representatives prior to implementation.

281. The Court approves the agreement on measures of satisfaction and the guarantees of non-repetition, made between Colombia and the representatives, inasmuch as the measures constitute a means to adequately redress the consequences of the violations established in this Judgment, are in line with this Court's jurisprudence, and represent a step forward by Colombia towards compliance with the obligation to make reparations in accordance with Article 63(1) of the Convention. Therefore, the State must fulfill all of the obligations it assumed towards the reparation beneficiaries within the time frame and in the manner set forth in the agreement and pursuant to paragraph 282 of this Judgment.

282. With regard to the agreed upon measures for which the time frame depended upon the issuance of this Judgment, this Court orders that the first, fourth and seventh measures aimed at "honoring the memory of the victims" (supra para. 277. I.1, I.4 and I.7), as well as the measures concerning "the publication of the Inter-American Court's Judgment" (supra para. 277.II), be implemented by the State within six months.

283. Finally, the Court does not consider it appropriate to grant the Commission's request made in its final written arguments that the State be ordered to "hold a public ceremony acknowledging international responsibility" since, under the partial agreement on reparations and in the representatives' final arguments, such a measure is not in dispute and its purpose would be achieved with the implementation of other agreed upon measures designed to honor the victims' memory and prevent repetition of events such as those in this case.

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284. In their final arguments, the representatives stated that they waived "[some of] the categories of reparations requested" in their brief containing pleadings and motions, which they deem to be "covered by the partial agreement" (supra para. 22). However, they mentioned the "issues of reparation in dispute" (supra para. 21).

285. The State alleged that "it has adopted measures [such as those the Court ordered in the 1996–1997 period] and on many occasions it has exceeded them".

286. The Court shall establish four additional measures of satisfaction and guarantees of non-repetition in addition to those approved (supra para. 277 to 282), as it deems them necessary to adequately repair the consequences of the violations established in this Judgment, in accordance with Article 63(1) of the Convention.

a) Obligation to investigate the events that resulted in violations in the instant case, and to identify, prosecute and punish those responsible

287. The Court has established in this Judgment that the domestic proceedings conducted in the present case have not constituted effective recourse to ensure true access to justice for the surviving victims and the next of kin declared to be victims; this requires proceedings within a reasonable time, the factual clarification of the events, the investigation and punishment of the perpetrators and reparation of the violations. For this reason, the Court held the State responsible for violating Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof.

288. The Court established such violation, inter alia, because of the lack of due diligence in conducting the investigation, the threats to judges, witnesses and relatives, the obstacles and hindrances caused to the investigation, as well as the unjustified delays in the proceedings, all of which has provided partial impunity in this case.

289. The Court repeats that the State is obliged to combat this situation by resorting to all available means, as impunity fosters the chronic repetition of human rights violations and renders victims and their relatives, who have a right to know the truth concerning the events, completely defenseless [FN261]. The acknowledgment and exercise of the right to know the truth in a specific situation constitutes a means of reparation. Therefore, in the instant case, the right to know the truth gives rise to the victims' expectations, which the State must satisfy. [FN262]

[FN261] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 440; Case of Almonacid Arellano et al., supra note 16, para. 148; and Case of the Moiwana Community, supra note 7, para. 204.
[FN262] Cf. Case of the Miguel Castro Castro Prison, supra note 8, para. 440; Case of Blanco Romero et al., supra note 119, para. 95; and Case of the Moiwana Community, supra note 7, para. 204.

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290. As for measures to fight impunity, the State held that "the National Office of the Attorney General has adopted juridical interpretations aimed at preventing events of impunity".

291. In this regard, the Court notes that the Office of the Attorney General has held two distinct positions concerning the investigation of conspiracy to commit a crime and the analysis of whether or not it may be prosecuted under the applicable statute of limitations, taking into account the paramilitary member's involvement in the commission of serious human rights violations. [FN263] In one case, the Office of the Attorney General held that aggravated conspiracy to commit a crime, "although not within the categories of genocide, war crimes, or crimes against humanity, does have a close relation with them, making it exempt from any statute of limitations" on criminal prosecution against serious human rights violations. [FN264] However, in another resolution, the Office of the Attorney General failed to establish whether there exists a "close relationship" between conspiracy to commit a crime and serious human rights violations and instead stated that "no charges may be brought against" four persons for

conspiracy to commit a crime, since the criminal action had been time-barred under the statute of limitations. [FN265] The result of the latter finding was that the investigation regarding one person accused of being a member of "Los Masetos" was closed.

[FN263] Concerning the cases of Waldo Patiño García and retired Lieutenant Luis Enrique Andrade Ortiz (supra notes 135 and 144).

[FN264] Cf. order of January 19, 2007 issued by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's written closing, volume II, pages 8015 and 8018).

[FN265] Cf. order issued on March 21, 2006 by the Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit (record of evidences to the State's reply brief, volume II, evidence 3U, pages 5026 and 5041)

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292. The Court stresses that when a judicial officer decides that a criminal action for conspiracy brought against a member of a paramilitary group is time barred, this decision should be based upon an exhaustive assessment of evidence which verifies that the paramilitary member's participation and association with this paramilitary group was unrelated to the commission of grave violations of human rights

293. It must be noted, under the same reasoning, that the grant of legal benefits to members of illegal armed groups (as established in Decree No. 128 of 2003) who claim not to have been involved in the complex structure of serious human rights violations requires the utmost due diligence to verify that the beneficiary did actually not participate in the structure responsible for the commission of such crimes.

294. This Court has consistently found inadmissible all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility, because these provisions and measures are intended to prevent the investigation and punishment of those responsible for serious human rights violations, such as torture, extrajudicial, summary or arbitrary execution and forced disappearance. Such violations are prohibited because they violate non-derogable rights recognized by international human rights law. [FN266]

[FN266] Cf. Case of Barrios Altos, supra note 201, para. 41. See also, cf. Case of La Cantuta, supra note 8, para. 152; Case of Almonacid Arellano et al., supra note 16, para. 112; and Case of the Ituango Massacres, supra note 15, para. 402.

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295. In the light of the foregoing considerations, the State must, within a reasonable time, and taking into account this Judgment's paragraphs 151 to 198, effectively conduct both current and future criminal proceedings and adopt all such measures necessary to clarify the events in this case in order to identify those responsible for the violations. The findings in such proceedings shall be publicized by the State in such a way as to enable the Colombian society to know the truth regarding the events of the Rochela Massacre.

b) Protection of judicial officials, witnesses, victims and their next of kin

296. The Court finds it especially important to emphasize that the events analyzed in this Judgment demonstrate the danger which judiciary officials confront due to the nature of their work. The present case represents an extreme example of crimes committed in order to impede both the fulfillment of their functions and their attempts to end impunity.

297. In order to prevent the repetition of these events, the Court considers it important that the State provide its judicial officers, prosecutors, investigators and other justice officials with recourse to an adequate security and protection system that takes into account the circumstances of the cases under their jurisdiction and their places of work so that they may perform their duties with due diligence. Furthermore, the State must ensure effective protection of witnesses, victims and relatives in cases of serious human rights violations, particularly and immediately with regard to the investigation of the events in this case.

c) Medical and Psychological Assistance

298. According to the affidavits [FN267] and the expert report [FN268] rendered in these proceedings, the events in this case have caused physical and psychological suffering to the next of kin of the deceased victims, and to the surviving victim Arturo Salgado Garzón and his next of kin. In some cases, the suffering has been severe. In her expert report, Ms. Treue referred to victims' next of kin need for medical and psychological treatment.

[FN267] Cf. affidavits offered by Esperanza Uribe Mantilla, Elvia Ferreira Useche, Luz Mireya Morales Cepeda, Erika Esmeralda Vargas Herrera, Nubia Vesga Fonseca, Luz Nelly Carvajal Londoño, Luz Marina Poveda León, Paola Martínez Ortiz, Alonso Castillo Mayoral, Sandra Paola Morales Bóveda, Sócrates Vesálio Guasca Castro, María Carmenza Morales Cepeda, Myriam Stella Morales Caro and Alfonso Morales Cárdenas (record of witness statements and expert reports, pages 7234 to 7237; 7223 to 7225; 7241 and 7242; 7227 to 7228; 7120 to 7124; 7310 to 7312; 6997 to 7000; 7012 to 7016; 7019 to 7030; 7003 to 7006; 7446 and 7447; 7439 to 7441; 7428 and 7429; and 7453 and 7454, respectively); and testimony offered by Arturo Salgado Garzón, Alejandra María Beltrán Uribe and Virgilio Alfonso Hernández Castellanos in the public hearing before the Inter-American Court held January 31 and February 1, 2007.
[FN268] Cf. expert report offered by Felicitas Treue (record of witness statements and expert reports, pages 6941 to 6948).

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299. Surviving victim Arturo Salgado Garzón made specific reference to the permanent physical harm caused by the lack of proper medical care for the wounds produced by the bullets. [FN269] Expert witness Treue also assessed the seriousness of this victim's physical and mental health and the severe impact that the events in this case have had on his family. [FN270]

[FN269] Cf. testimony offered by Arturo Salgado Garzón in the public hearing before the Inter-American Court held January 31 and February 1, 2007.

[FN270] Cf. written report offered by expert Felicitas Treue (record of witness statements and expert reports, volume I, pages 6915 and 6916).
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300. With regard to the next of kin of the deceased victims, expert witness Treue noted that "there is a tangible presence of psychological strain and lasting suffering caused by the murder of their relatives. The next of kin lack the opportunity to mourn and process the violent deaths of their relatives." [FN271]

[FN271] Cf. written report offered by expert Felicitas Treue (record of witness statements and expert reports, page 9683).
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301. In their testimony before the Court, Alejandra María Beltrán Uribe [FN272] and Virgilio Alfonso Hernández Castellanos, [FN273] children of two of the deceased victims, described the deep impact that the events had on their families' physical and mental health. Ms. Beltrán, daughter of victim Pablo Antonio Beltrán Palomino, described in particular how the health of her brother had been affected without the financial support from their father required to deal with her brother's diet needs and the specialized medical assistance needed for her brother's illness. Mr. Virgilio Hernández Castellanos, son of victim Virgilio Hernández Serrano, stressed his mother's physical and psychological ill health, and stated that "any circumstance that may remind [his] mother of [his] father brings about serious consequences for [her] health".

[FN272] Cf. testimony offered by Alejandra María Beltrán Uribe in the public hearing before the Inter-American Court held January 31 and February 1, 2007.
[FN273] Cf. testimony offered by Virgilio Alfonso Hernández Castellanos in the public hearing before the Inter-American Court held January 31 and February 1, 2007.
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302. In order to contribute to the reparation of the physical and psychological damages, the Tribunal finds it necessary to order the State to freely and immediately provide, through its specialized institutions of health, the medical and psychological treatment required by the next of kin of the deceased victims, and the surviving victim Arturo Salgado Garzón and his next of kin. The medical treatment for physical health should be provided by specialized medical personnel and institutions that ensure that the most adequate and effective treatment is provided for the pain and sickness that these individuals suffer. The psychological treatment should be provided by medical personnel and institutions which specialize in the treatment of victims of acts of violence similar to the events in this case. This medical and psychological treatment should be provided so long as needed, including the provision of necessary medicine, and taking into consideration the suffering of each of the victims following an individual evaluation.

d) Education measures

303. Considering that the Rochela Massacre was perpetrated, in violation of imperative rules of International Law, by paramilitaries with the participation of government agents, the State must adopt measures designed to educate and train members of security forces on the principles and rules governing the protection of human rights and international humanitarian laws, including limitations that constrain them. To that end, the State shall effectively implement, within a reasonable time, permanent training programs on human rights for the Colombian armed forces. The program shall place particular stress on this Judgment.

D) COSTS AND EXPENSES

304. As noted by the Court in past decisions, costs and expenses are included in the concept of reparation as enshrined in Article 63(1) of the American Convention. [FN274]

[FN274] Cf. Case of Goiburú et al., supra note 11, para. 180; Case of Montero Aranguren et al. (Detention Center of Catia), supra note 238, para. 152; and Case of Ximenes Lopes, supra note 24, para. 252.

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305. The Court takes into account that the victims and their representatives incurred expenses in the course of the domestic and international proceedings involved in this case. The representatives have requested the Court to take into account “the monetary losses suffered [by the victims' relatives] in their [...] search for justice, truth and reparation". The Court notes that, even though no receipts have been produced, it must be presumed that the relatives of the victims incurred various expenses during the domestic contentious administrative and criminal proceedings, which have lasted for over 17 years, as well as in all the other steps taken to report the events and seek justice in connection with the events of the Rochela Massacre. In view of the foregoing, the Court sets in equity the amount of US$ 2,000.00 (two thousand United States Dollars or its equivalent in Colombian currency) for each deceased victim's family and for surviving victim Arturo Salgado Garzón. The family units of the deceased victims should designate a person to collect the abovementioned amounts on their behalf. The State shall make the payments within one year.

306. As for the international proceedings, the “José Alvear Restrepo” Legal Cooperative represented the victims and their next of kin from 1997 in the proceedings before the Inter-American Commission and the Inter-American Court. The Center for Justice and International Law (CEJIL) has acted as the representative in the proceedings before the Court in this case. Due to the circumstances and number of victims in the present case, the Court considers that the reimbursement of costs cannot be granted directly to the victims. Rather, as established by this Tribunal, the State must reimburse, in equity, the costs and expenses in the amount of US$ 20,000.00 (twenty thousand United States Dollars or its equivalent in Colombian currency) to the “José Alvear Restrepo” Legal Cooperative and US$ 5,000.00 (five thousand United States Dollars or its equivalent in Colombian currency) to CEJIL. The State shall make the payments within one year.

E) MANNER OF COMPLIANCE WITH THE PAYMENT AMOUNTS ORDERED AND SOLUTION OF POSSIBLE DISPUTES RELATED TO THE PARTIAL AGREEMENT ON REPARATIONS

307. The partial agreement on reparations has been approved by the Court through this Judgment, so any dispute or controversy arising from it shall be decided by this Court.

308. The payment of indemnities established in favor of the next of kin declared to be victims shall be provided to them directly. As for persons who have died or die prior to the payment of their compensation, the payment shall be made to their heirs pursuant to applicable domestic law. [FN275]

[FN275] Cf. Case of Goiburú et al., supra note 11, para. 162; Case of Ximenes Lopes, supra note 24, para. 219; and Case of Baldeón García, supra note 112, para. 192.

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309. If the beneficiaries of the awards are not able to collect the payments within the specified term indicated above, the State shall deposit the amounts in an account or draw a certificate of deposit from a reputable Colombian financial institution, in United States Dollars, under the most favorable financial terms the law in force and customary banking practice allow. If compensation goes unclaimed after ten years, the amounts plus interest accrued shall return to the State.

310. The State may fulfill its pecuniary obligations by tendering United States Dollars or an equivalent amount in the currency of Colombia, at the exchange rate prevailing in New York, United States of America on the date prior to the payment date.

311. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses shall not be affected, reduced or conditioned by taxing conditions now existing or hereinafter created. Therefore, beneficiaries shall receive the total amount in conformity to the provisions herein.

312. Should the State fall into arrears with its payments, Colombian banking default interest rates shall be paid on the amount owed.

313. In accordance with its constant practice, the Court retains its power, which is inherent in its scope of authority and the provisions of Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case shall be closed once the State implements in full the provisions herein. Colombia shall, within a year from notification of this Judgment, submit a report to the Court on the measures adopted in compliance therewith.

X. OPERATIVE PARAGRAPHS

314. Therefore,

THE COURT

DECLARES,

By a unanimous vote, that:

1. It accepts the partial recognition of international responsibility effectuated by the State for the events of January 18, 1989, according to the corresponding terms of paragraphs 8 to 54 of the present Judgment.
2. The State violated the right to life enshrined in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) of the same, to the detriment of Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, in the corresponding terms expressed in paragraphs 66 to 103, 123 to 128 and 140 of the present Judgment.
3. The State violated the right to personal integrity enshrined in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of the same, to the detriment of Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, in the corresponding terms expressed in paragraphs 66 to 103, 129 to 136 and 140 of the present Judgment.
4. The State violated the right to personal liberty enshrined in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) of the same, to the detriment of Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, Samuel Vargas Páez, Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, in the corresponding terms expressed in paragraphs 66 to 103, 122 and 140 of the present Judgment.
5. The State violated the right to personal integrity enshrined in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, to the detriment of the next of kin of the victims identified in the Appendix of the present Judgment, that for this purpose serves as part of the Judgment, in corresponding terms expressed in paragraphs 66 to 103, 137 to 139 and 141 of the same.
6. The State violated the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1.1 of the same, to the detriment of the surviving victims Arturo Salgado Garzón, Wilson Humberto Mantilla Castilla and Manuel Libardo Díaz Navas, and the next of kin of the deceased victims identified in the Appendix of the present Judgment, that for this purpose, serves as part of the Judgment in the terms identified in paragraphs 142 to 225 of this Judgment.
7. This Judgment constitutes per se a form of reparation.

AND DECIDES,

Unanimously, that:

8. The Court approves the "partial agreement in relation to some measures of reparation", consummated by the State and the representatives of the victims and their next of kin on January 31, 2007, in the terms expressed in 240, 277 to 282 and 307 of the present Judgment.
9. The State must, within a reasonable time, effectively conduct the criminal proceedings currently underway and those that have yet to begin, and must adopt all measures necessary that reveal the facts of the present case in order to determine the responsibility of those who participated in the mentioned violations, in the terms expressed in paragraphs 287 to 295 of the present Judgment. The results of these proceedings shall be released to the public by the State, so that the Colombian people may know the truth of the events of the present case.
10. The State must guarantee that functionaries of the judiciary, prosecutors, investigators, and other employees of the justice system enjoy a system of adequate security and protection, taking into account the circumstances of the cases in which they are involved and the places where they work. This system should ensure that they may undertake their duties with due diligence. Likewise, the State shall ensure the effective and expeditious protection of witnesses, victims, and their next of kin in cases of gross violations of human rights, in particular, with regard to the investigation of the events of the present case, in the terms expressed in paragraphs 296 to 297 of the present Judgment.
11. The State shall immediately provide, without cost, the medical and psychological treatment needed by the next of kin of the deceased victims, as well as surviving victim Arturo Salgado Garzón and his next of kin, in the terms expressed in paragraphs 298 to 302 of the present Judgment.
12. The State must develop and maintain permanent programs of human rights education within the Colombian armed forces, and guarantee their effective implementation, in terms expressed in paragraph 303 of the present Judgment.
13. The State shall pay the amounts established in the present Judgment for pecuniary damages, non-pecuniary damages, and costs and expenses within a period of one year, counted from the notification of this Judgment, in the terms expressed in paragraphs 248 to 252, 267 to 274, 305, 306 and 308 to 312 of the same.
14. The Court will supervise the integral implementation of the present Judgment, and will consider the present case closed once the State has fully complied with the orders contained therein. Within a period of one year, counted from notification upon the State of the present Judgment, the State shall provide the Court with a report on the measures taken to fulfill the Judgment, in the terms expressed in paragraph 313 of the present Judgment.

Judge García Ramírez presented to the Court his Concurring Vote, which accompanies this Judgment.

Drafted in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on May 11, 2007.

Sergio García Ramírez
President

Cecilia Medina Quiroga
Manuel E. Ventura Robles
Diego García-Sayán
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE JUDGMENT OF THE INTER-AMERICAN COURT IN THE CASE OF THE ROCHELA MASSACRE V. COLOMBIA OF MAY 11, 2007

1. Within its jurisdiction over violations of human rights, the Inter-American Court serves from a juridical perspective that derives from the instruments which confer jurisdiction upon it as well as those international norms which come together to determine the reach of certain facts and norms, among other elements. In this way, the Court lies within a context of regulation and culture which provides contemporary and historical meaning to its reflections and findings.

2. Moreover, the Court incorporates into its reflections elements which govern other branches of the juridical order, conscious of the fact that the Law which directly applies, that is, the International Law of Human Rights of the Inter-American Court forms part of the complete juridical order.

3. The use of juridical concepts from other branches or disciplines in the rulings of this Tribunal is both evident and frequent. To mention only one example, recall the elaboration of Inter-American jurisprudence on the subject of the reach of the right to use and enjoy one's own goods –enshrined in Article 21 of the American Convention under the rubric of the right to private property- in light of the juridical system of the ancient American peoples. The Court has not refused these concepts, nor has it denied the possibility –or rather, the necessity- of employing notions and experiences rooted in other juridical spaces in its judgments.

4. In the Judgment that accompanies this opinion, the Court has found –invoking precedent from the European Court: Makaratzis v. Greece, of 2004, and Acar and Others v. Turkey, of 2005- that the violation of the right to life exists when the transgressing agents undertake all the acts which should have produced the deprivation of life, even though this deprivation is not

consummated due to causes beyond their control, such that they were not even conscious of the fact that any individuals had survived the massacre. This situation highlights the characteristics of the illicit conduct and its design to produce a certain injurious end, the use of force, and the intent of the agents. For all these reasons, the facts demonstrate a direct and deliberate attack on the right to life. Consequently, it is possible and appropriate to categorize them within this category of violations.

5. The Inter-American Court has followed this line of reflection in the analysis of the events of The Rochela, in the sense that it maintains that "The manner in which the massacre was executed through an attack with firearms of the indicated magnitude, leaving the victims without any possibility of escape, constituted a threat to the life of all the 15 members of the Judicial Commission. The fact that three of them were only injured and not killed is merely fortuitous." The mere threat, as severe as it may have been, by itself would be insufficient to constitute a violation of the right protected by Article 4. What is required is an attack upon the sphere protected, which demonstrates sufficient gravity to infringe this right.

6. This criterion of the Tribunal implies a step forward in the protection of human rights, consistently within the framework of the Pact of San José –without excess or defect; and far from capricious judgment-, whose interpretation sustains the conclusions reached by this Tribunal. The circumstance that the agents may have erred in their evaluation of the material result of their illicit conduct does not exclude the profound illegality of it and, consequently, the attack affects one of the fundamental rights contained in the American Convention.

7. The reflection of this international Tribunal can be reinforced and supported by elements from criminal law. Seen from another perspective, which helps to establish the rationality of the judgment, the issue can be understood under the theory of attempted homicide, that is to say, a theory of iter criminis by which the integrity of a legally protected sphere and the right which protects it are affected or put in grave danger. The criminal denomination applicable under this theory is also the deprivation of life (by attempt), even though the aggressor may not have attained the goal sought. Of course –and I emphasize, in order to avoid any misunderstanding- the Inter-American Court is not a criminal tribunal, nor does it rule upon homicide, nor determine the existence of a punishable attempt. As a result we should not speak of crimes or offenses consummated or attempted, but rather of violations of human rights, and thus reserve the categories and denominations to the appropriate fields of law.

8. Nonetheless, this unequivocal exclusion of criminal jurisdiction and the crimes identified therein does not prevent the Tribunal from reflecting the techniques administered by the criminal law in its analysis and for the purpose of the defense of legally protected spheres. The criminal law includes an extensive development of the issue that now concerns me and which determined the Court's ruling with regard to the survivors of the massacre. From this jurisprudential development and its conclusions, the Tribunal, which hears cases with regard to the violation of human rights may benefit, for its own mission.

9. In my opinion, the evaluation performed by the Court in this particular case, characterized by specific facts, does not necessarily imply, in an of itself, that in our subject of jurisdiction the concept of attempt –with this or any other denomination- has been introduced, as

a degree of violation of all human rights, independent of the nature of these violations and the circumstances that occur in the corresponding attack. This issue will have to be reexamined in other cases and the appropriate reaches and limitations must be explored in the variety of situations that it may arise. The door remains open, then, for a future clarification of the subject until an adequate general concept may be reached.

10. In the same period of sessions in which the Court adopted the Judgment in the Case of the Rochela Massacre, the Court also issued its Judgment in the Case of Bueno Alves v. Argentina, also on May 11, 2007. In this case, the path was cleared, I hope definitively, by the procedural reflection with regard to the nature and reach of certain acts by the State, denominated by the expression "recognition of international responsibility" or called, as a whole "acquiescence."

11. It is true that the human rights proceedings analyze the allegations from which the State's international responsibility arises for certain illicit conduct by its agents –or by third parties- which is attributable to it, with the respective legal consequences. But it is also true that each of these acts of acquiescence has its own character and carries with it necessary effects, which it is indispensable to note and evaluate, even when none of these, to our knowledge, carries with it a definitive conclusion to the proceedings and the establishment of an "official" version with regard to the events and the validity of the allegations. Both of these are determined by the examination and ruling by the Court, and are not conditioned by dispositive acts by one of the parties.

12. The reception by the Court of concepts which have arisen in procedural law, perfectly justified and in fact necessary, allows the determination of the reach of concepts which conform to well-established doctrine on that subject and which thereinafter the international courts of human rights may take advantage. This reception helps understanding with regard to acts of international procedure, the effects which natural flow from them, the condition of the procedural subjects (especially the parties), the role of other participants in the proceedings, the legitimization of the proceedings, etcetera.

13. In several opinions which I have attached to Judgments of the Court, I have been concerned with recalling the characteristics of admissions and acquiescence, which may have the effect –along with other elements subject to the Court's findings- of producing a ruling which declares the violation (the declarative part of the comprehensive judicial ruling) and determines the legal consequences (the punitive part of that ruling), and with these an evaluation of the international responsibility of the State in the case sub judice.

14. I have sought to associate these reflections with the most credible procedural doctrine. So, for example, in my opinion corresponding to the Judgment in the Case of Bulacio v. Argentina, of September 18, 2003, I observed that two procedural concepts coincide in an acknowledgment of responsibility, both of them with material repercussions, bearing in mind the scope of said recognition: confession and acquiescence. In point of fact, as stated by Alcalá-Zamora, acquiescence is "an act of disposition, or a waiver of rights:" a renunciation of the right to legal defense. "[C]onfession refers to factual statements and acquiescence refers to legal claims" (Proceso, autocomposición y autodefensa (Contribución al estudio de los fines del

proceso), Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 3d ed., Mexico, 1991, p. 96).

15. In the Case of Bueno Alves Judgment, the Court does not enter into a discussion of international responsibility as mentioned by the State–which is, of course, a central issue in the proceedings, and instead includes in the concept of acquiescence both this issue and the admission. The Court analyzes each concept separately and with the corresponding characterization and effects: the first concept, as an admission of facts, reduces the conflict over the related evidence; the other, as an acceptance of the claims of the opposing party under certain juridical terms, guides the substance of the litigation.

16. In effect, it is said: a) "This Tribunal understands that the State, upon having accepted the conclusions of the Report (of the Inter-American Commission) and upon refraining from challenging the facts that the Commission alleged in its application, has admitted to them. These facts constitute the factual basis of these proceedings" (para. 26); and b) "This Court finds that the 'acceptance' by the State (with regard to the conclusions contained in the Report by the Commission regarding the violation of certain precepts of the Convention) constitutes an acquiescence to the Commission's claims of law" (para. 30) (emphasis supplied).

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary