

# La Rochela Massacre v. Colombia

## ABSTRACT<sup>1</sup>

*This case is about the massacre by a paramilitary group (Los Masetos) of fifteen Colombian judicial officers who were investigating human rights violations. The Court found the State violated the American Convention on Human Rights for the loss of life, suffering of those who had been executed and the survivors of the massacre, and failing to adequately investigate and try those responsible.*

## I. FACTS

### A. Chronology of Events

**January 18, 1989:** In the morning hours, fifteen members of the Colombian Judicial Corps (*Cuerpo Técnico de la Policía Judicial*, “Judicial Officers”) travel from Barrancabermeja to La Rochela, Colombia, to obtain statements of witnesses who had been summoned to court in the previous days for an ongoing investigation.<sup>2</sup> On the way, the Judicial Officers are intercepted by a group of fifteen heavily armed and uniformed men who pretend to be members of the XXIII Front of the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, “FARC”) guerilla group.<sup>3</sup>

A man who identifies himself as the XXIII Front’s commander interrogates the Judicial Officers, asking them the reason for their presence and how many Judicial Officers have traveled to the area.<sup>4</sup> Shortly afterward, a group of approximately forty armed men appear, pretending to be members of the same Front of the FARC and take the Judicial Officers’ officially registered revolvers.<sup>5</sup>

Approximately thirty minutes later, several more men, who are

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2. *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 106 (May 11, 2007).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 107.

heavily armed and dressed as civilians, arrive.<sup>6</sup> One of them introduces himself as the highest commander in charge of the same FARC Front.<sup>7</sup> All of the armed men impersonating the FARC are members of the paramilitary group called "Los Masetos."<sup>8</sup>

Subsequently, the members of Los Masetos lock the Judicial Officers in a guarded room for approximately two and a half hours.<sup>9</sup> At 12:00 p.m., the commanders of Los Masetos convince the Judicial Officers that in order to transfer them to a safe place to finish their judicial investigations, they must tie up the Judicial Officers in order to simulate the appearance of a FARC kidnapping in case the Colombian Army were to appear.<sup>10</sup>

The paramilitary group drives the Judicial Officers approximately three kilometers toward Barrancabermeja, until they reach a place known as "La Laguna."<sup>11</sup> When the vehicles stop, the armed men get out, come into formation, and begin to shoot indiscriminately and continuously at the Judicial Officers for several minutes while they are still in the vehicles.<sup>12</sup> The paramilitary members then give each victim a final, finishing shot.<sup>13</sup>

Before leaving, the paramilitary members write, "*Fuera el 'MAS' (Muerte a Secuestradores), fuera los paramilitares*" ("Be gone 'MAS' (Death to Kidnappers), be gone paramilitaries") on the exterior of the vehicles to attribute the massacre to the guerrilla groups.<sup>14</sup> Before leaving, they take twenty-three of the twenty-five case files the Judicial Officers had been carrying.<sup>15</sup>

After the paramilitary members leave, the only three survivors start a nearby vehicle and flee the area of the massacre.<sup>16</sup> The vehicle breaks down after driving approximately three kilometers toward Barrancabermeja.<sup>17</sup> Two survivors, Mr. Manuel Libardo Díaz Navas and Mr. Wilson Humberto Mantilla, manage to escape and ask for help from individuals passing in a soda delivery truck near the area where their vehicle had stopped.<sup>18</sup> However, the other survivor, Mr. Arturo Salgado

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6. *Id.*

7. *Id.*

8. *Id.* ¶ 108.

9. *Id.* ¶ 110.

10. *Id.* ¶¶ 111-112.

11. *Id.* ¶ 112.

12. *Id.*

13. *Id.* ¶ 113.

14. *Id.* ¶ 115.

15. *Id.*

16. *Id.* ¶ 116.

17. *Id.*

18. *Id.*

Garzón, who had been wounded with a bullet in his buttocks and head, stays in the area and waits for help.<sup>19</sup> At approximately 5:00 p.m., journalists from the newspaper *Vanguardia Liberal* arrive and help him to a clinic.<sup>20</sup>

**January 19, 1989 – March 1989:** After the massacre, the three surviving victims live for three months in an apartment provided by the Office of Criminal Proceedings under surveillance, as they could not return home due to security reasons.<sup>21</sup> Because of the threats they received, the Director of Criminal Proceedings sends them to different cities in Colombia.<sup>22</sup> After these events, the State does not guarantee adequate medical assistance to Mr. Salgado Garzón for his injuries.<sup>23</sup> In the clinic, those treating him even leave a piece of the bullet in his buttocks.<sup>24</sup> Likewise, Mr. Salgado Garzón faces dire economic circumstances because he confronts this situation with only his salary.<sup>25</sup>

**January 19, 1989:** Local law enforcement begins to investigate the January 18<sup>th</sup> events.<sup>26</sup>

**March 7, 1989:** Local law enforcement requests the commanding officer in charge of the XIV Colombian Army Brigade, who supported Los Masetos, to appear in civil criminal court.<sup>27</sup> The application is denied on the grounds that the military courts are processing the commanding officer.<sup>28</sup>

**March 8, 1989:** Armed men break into the home of Mr. Luis María Sanabria, a witness to the La Rochela Massacre, and kill him.<sup>29</sup>

**March 9, 1989:** Mr. Pedro José Blas Rueda and Mr. Antonio Pinilla Baron, also witnesses to the La Rochela Massacre, are killed.<sup>30</sup>

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19. *Id.*

20. *Id.* ¶ 117.

21. *Id.* ¶ 119.

22. *Id.*

23. *Id.* ¶ 118.

24. *Id.*

25. *Id.* ¶ 120.

26. *La Rochela Massacre v. Colombia*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.995, ¶ 70 (Mar. 10, 2006).

27. *Id.* ¶ 71.

28. *Id.*

29. *Id.* ¶ 72.

30. *Id.*

**June 9, 1989:** After receiving dozens of anonymous death threats, Mr. Francisco Hernandez Lozano, investigating officer of the La Rochela Massacre, is shot in front of a mall in Bogotá, Colombia.<sup>31</sup>

**May 31, 1989:** Local law enforcement of Bucaramanga orders the arrest of a high-ranking Colombian Military official.<sup>32</sup>

**June 13, 1989:** Local law enforcement of Bucaramanga orders the arrest of another high-ranking Colombian Military official.<sup>33</sup>

**July 29, 1989:** Due to death threats against the local Courts, the cases handling the La Rochela Massacre are transferred to the Second Court of Public Order of Pasto.<sup>34</sup>

**August 18, 1989:** A well-known member of Los Masetos, Mr. Alonso de Jesús Baquero Agudelo (alias "Vladimir"), is arrested.<sup>35</sup>

**July 29, 1990:**<sup>36</sup> The Second Court of Public Order of Pasto orders prison sentences between five and thirty years to several criminals implicated in the La Rochela Massacre.<sup>37</sup>

**November 14, 1990:** On appeal, the Sentencing Chamber of the Superior Court of Public Order amends, reduces, and revokes some of the sentences of the July 29, 1990 judgment.<sup>38</sup> The Sentencing Chamber finds a number of shortcomings in the investigation and orders a re-investigation of several of the accused, and transfers the re-investigation to the Regional Law Enforcement of Cali.<sup>39</sup>

**February 18, 1992:** Two years after the November 14, 1990 appellate order, the re-investigation is referred to the Departmental Office of Public Order in Cali.<sup>40</sup>

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31. *Id.*

32. *Id.* ¶ 73.

33. *Id.*

34. *Id.*

35. *Id.* ¶ 74.

36. There are discrepancies among the various court documents as to whether the correct date is June 29, 1990 or July 29, 1990.

37. *Id.* ¶ 75.

38. *Id.* ¶ 76.

39. *Id.* ¶ 77.

40. *Id.*

**July 28, 1996:** After the re-investigation remains inactive for four years, the National Human Rights and International Humanitarian Law Unit takes over the investigation.<sup>41</sup>

**November 5, 1996:** The National Human Rights Unit of the Office of the Attorney General issues Resolution No. 125, prosecuting more individuals in the La Rochela Massacre.<sup>42</sup>

**December 30, 1997:** The Delegate Prosecutor to the Supreme Court of Justice issues an exculpatory order with regard to one former congressman, Mr. Tiberio Vilareal Ramos, who is accused of planning the massacre.<sup>43</sup>

**February 18, 1998:** The National Human Rights and International Humanitarian Law Unit revokes the charges against retired Major Oscar de Jesús Echandía.<sup>44</sup> The Regional Director of the Prosecutor's Office finds that the massacred Judicial Officers were not investigating other human rights violations that were previously committed by related paramilitary in the same region, and therefore rules out the theory that the motive of the La Rochela Massacre was to seize the case files of the previous human rights violations investigation.<sup>45</sup>

**January 7, 1999:** The Terrorism Unit of the Office of the Bogotá Regional Prosecutor issues a resolution to preclude the investigation against Mr. Luis Alberto Arrieta Morales.<sup>46</sup>

**May 23, 2003:** Mr. Marceliano Panesso Ocampo, a member of Los Masetos, is the only paramilitary leader convicted in the first proceeding for the La Rochela Massacre.<sup>47</sup> The First Criminal Court of the Specialized Circuit of Bucaramanga issues the judgment.<sup>48</sup>

**October 19, 2005:** The military criminal court acquits the commanding officer in charge of the XIV Colombian Army Brigade who supported

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41. *Id.* ¶ 78.

42. *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 154(a) n.129 (May 11, 2007).

43. *Id.* ¶ 154(d) n.134.

44. *La Rochela Massacre v. Colombia*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.995, ¶ 79 (March 10, 2006).

45. *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, ¶162.

46. *Id.* ¶ 154(d) n.135.

47. *Id.* ¶ 154(b) n. 131.

48. *Id.* ¶ 154(d).

Los Masetos.<sup>49</sup>

**March 21, 2006:** The Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit issues a resolution precluding the investigation against Mr. Waldo Patiño García and renders charges against Mr. Lanfor Miguel Osuna Gómez, Mr. Jairo Iván Galvis Brochero, and Mr. Gilberto Silva Cortés.<sup>50</sup>

**July 31, 2006:** The Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit issues a resolution to preclude the investigation against Mr. Robinson Gutiérrez de la Cruz.<sup>51</sup>

**August 25, 2006:** The National Human Rights and International Humanitarian Law Unit issues a report regarding the La Rochela Massacre.<sup>52</sup>

**January 19, 2007:** The Office of the Fourteenth Specialized Prosecutor for the National Human Rights and International Humanitarian Law Unit issues a resolution prosecuting more individuals in the La Rochela Massacre.<sup>53</sup>

### *B. Other Relevant Facts*

The State establishes a legal framework in the 1960s that promotes the creation of armed groups organized to fight against guerrilla organizations.<sup>54</sup> These groups are supported by State officials and later become paramilitary groups.<sup>55</sup> The State grants the members of such groups the right to bear and possess arms, and provides them with logistical support, a right exclusively vested in the State Armed Forces.<sup>56</sup> This legal framework is in force at the time of the La Rochela Massacre.<sup>57</sup> Members of the State Army promote the creation of, and provide support to, the Los Masetos paramilitary group that eventually carries out the mas-

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49. La Rochela Massacre v. Colombia, Petition to the Court, ¶ 87.

50. La Rochela Massacre v. Colombia, Merits, Reparations, and Costs, ¶¶ 154(d)-(e) n.138.

51. *Id.* ¶ 154(b) n.131.

52. *Id.* ¶ 154(a) n.129.

53. *Id.*

54. *Id.* ¶ 82.

55. *Id.*

56. *Id.*

57. *Id.*

sacre.<sup>58</sup>

The State eventually acknowledges that the Judicial Officers 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.<sup>59</sup> The objective of the human rights violations in this case was to execute the Judicial Officers and take away or destroy the case files related to the investigations that were under way.<sup>60</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**October 8, 1997:** The "José Alvear Restrepo" Legal Cooperative files a petition with the Inter-American Commission on Human Rights on behalf of the victims of the La Rochela Massacre.<sup>61</sup>

**February 26, 2001:** The Commission holds a hearing with the participation of both parties.<sup>62</sup>

**October 9, 2002:** The Commission adopts Report No. 42/02, declaring the petition admissible.<sup>63</sup>

**March 7, 2005:** The Commission adopts its Report on the Merits No. 29/05, which makes certain recommendations to the State.<sup>64</sup>

The Commission finds that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention all in relation to Article 1(1) (Obligation to Respect Rights) to the detriment of the victims and their families.<sup>65</sup>

The Commission recommends that the State acknowledge international responsibility for the La Rochela Massacre.<sup>66</sup>

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58. *Id.* ¶ 94.

59. *Id.* ¶ 101(g).

60. *Id.* ¶ 101(h).

61. *Id.* ¶ 1.

62. *La Rochela Massacre v. Colombia*, Admissibility Report, Report No. 42/02, Inter-Am. Comm'n H.R., Case No. 11.995, ¶ 5 (Oct. 9, 2002).

63. *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 1 (May 11, 2007).

64. *Id.* ¶ 1. The Commission did not publish Report No. 29/05.

65. *Id.* ¶ 1 n.2.

66. *La Rochela Massacre v. Colombia*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.995, ¶ 4 (Mar. 10, 2006).

The Commission recommends that the State pay sufficient compensation to the victims and their families.<sup>67</sup>

**September 28, 2005:** The State organizes a public act to acknowledge responsibility for the La Rochela events with the participation of the Vice President and the Minister of Foreign Affairs.<sup>68</sup>

**February 28, 2006:** The Commission concludes that not all of its recommendations have been complied with, and consequently, decides to submit this case to the jurisdiction of the Court.<sup>69</sup>

### *B. Before the Court*

**March 10, 2006:** The Commission submits the case to the Court after the State fails to adopt its recommendations.<sup>70</sup>

#### 1. Violations Alleged by Commission<sup>71</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

*all in relation to:*

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

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67. *Id.* ¶ 7.

68. La Rochela Massacre v. Colombia, Merits, Reparations, and Costs, ¶ 1.

69. *Id.*

70. *Id.*

71. *Id.* ¶ 3.



2. Violations Alleged by Representatives of Victims<sup>72</sup>

Same Violations Alleged by the Commission, plus:

Article 7 (Right to Personal Liberty)

The Right to the Truth

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

**May 9, 2006:** The State appoints Juan Carlos Esguerra Portocarrero as Judge *ad hoc*.<sup>73</sup>

**November 28, 2006:** Judge Juan Carlos Esguerra Portocarrero submits a communication to the Court, recusing himself as Judge *ad hoc*.<sup>74</sup>

## III. MERITS

A. *Composition of the Court*

Sergio García Ramírez, President

Cecilia Medina Quiroga, Vice President

Manuel E. Ventura Robles, Judge

Diego García-Sayán, Judge

Leonardo A. Franco, Judge

Margarette May Macaulay, Judge

Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary

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72. *Id.* ¶ 4. . “José Alvear Restrepo” Legal Cooperative acted as representative before the Commission and the Court, and the Center for Justice and International Law (“CEJIL”) acted as representative only before the Court for Mr. Orlando Morales Cárdenas, Ms. Mariela Morales Caro, Mr. Wilson Humberto Mantilla Castilla, Mr. Benhur Iván Guasca Castro, Mr. César Augusto Morales Cepeda, Mr. Arnulfo Mejía Duarte, Mr. Gabriel Enrique Vesga Fonseca, Mr. Arturo Salgado Garzón, Mr. Luis Orlando Hernández Muñoz, Mr. Manuel Libardo Díaz Navas, Mr. Samuel Vargas Páez, Mr. Pablo Antonio Beltrán Palomino, Mr. Yul Germán Monroy Ramírez, Mr. Virgilio Hernández Serrano, Mr. Carlos Fernando Castillo Zapata, as well as of the above-mentioned deceased victims and their next of kin. *Id.*

73. *Id.* ¶ 7 n.4.

74. *Id.*

Emilia Segares Rodríguez, Deputy Secretary

*B. Decision on the Merits*

**May 11, 2007:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>75</sup>

The Court found unanimously that the State had violated:

Articles 4 (Right to Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of the fifteen victims and their next of kin,<sup>76</sup> because:

*Under Article 4 (Right to Life), states must adopt measures to prevent State-supported security forces from arbitrarily depriving individuals of their lives.<sup>77</sup> The Court found the State responsible for the deaths of the twelve Judicial Officers during the massacre.<sup>78</sup> Regarding the three surviving Judicial Officers, the State admitted that it violated Article 4 (Right to Life) to the detriment of these individuals.<sup>79</sup> When analyzing whether there is a violation of the right to life of individuals who did not die, the Court analyzed the degree, kind, and intention behind the use of force.<sup>80</sup> The fact that surviving victims are injured and not killed is “merely fortuitous.”<sup>81</sup> The perpetrators of the massacre threatened the surviving victims’ lives by forcing them into a state of complete defenselessness, without any possibility of escape.<sup>82</sup> Further, the perpetrators of the massacre specifically intended to thwart the Judicial Officers in the exercise of their judicial responsibilities to deter future legal investigations.<sup>83</sup> As a result, the Court determined that the State violated Article 4 (Right to Life) to the detriment of the twelve Judicial Officers killed, as well as the three who survived.<sup>84</sup>*

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75. La Rochela Massacre v. Colombia, Merits, Reparations, and Costs.

76. *Id.* ¶¶ 104-141.

77. *Id.* ¶ 123.

78. *Id.*

79. *Id.*

80. *Id.* ¶ 126.

81. *Id.* ¶ 127.

82. *Id.*

83. *Id.* ¶ 101(h).

84. *Id.* ¶ 128.

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) guarantee a strict prohibition on physical and psychological torture or cruel punishment.<sup>85</sup> The absolute prohibition of torture derives from international jus cogens.<sup>86</sup> The Court found the State violated the personal integrity of all the Judicial Officers because, prior to the massacre, the deceased Judicial Officers and the three survivors suffered physical, mental, and moral suffering, which constituted psychological torture.<sup>87</sup> The hours of detention before and during the massacre constitute psychological torture based on the conditions the victims suffered prior to their deaths, the events the survivors endured to save their own lives, and the horrible violence used during the massacre.<sup>88</sup>

The State also violated the personal integrity of the victims' next of kin.<sup>89</sup> The right of the deceased victims' next of kin to personal integrity may be violated as a result of the specific circumstances of the violations committed against their loved ones, and due to the subsequent acts and omissions of the State with regard to these events.<sup>90</sup> The Court found the manner in which the Judicial Officers were tortured,<sup>91</sup> in conjunction with the State's acknowledgment of responsibility for the violation of Article 5 (Right to Humane Treatment) with regard to the victims' next of kin,<sup>92</sup> constituted sufficient violations of personal integrity.<sup>93</sup> Thus, the Court determined that the State violated Article 5(1) (Right to Physical, Mental and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).<sup>94</sup>

Finally, the Court found that the State violated Article 7 (Right to Personal Liberty) to the detriment of the fifteen Judicial Officers because they were illegally and arbitrarily detained for hours under the control of members of the Los Masetos paramilitary group.<sup>95</sup>

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85. *Id.* ¶ 132.

86. *Id.*

87. *Id.* ¶ 129.

88. *Id.* ¶ 130.

89. *Id.* ¶ 137.

90. *Id.*

91. *Id.* ¶ 138.

92. *Id.* ¶ 139.

93. *Id.*

94. *Id.* ¶ 140.

95. *Id.* ¶ 122.

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), 25 (Right to Judicial Protection), and the Right to Truth, in relation to Article 1(1) of the Convention, to the detriment of the fifteen victims and their next of kin,<sup>96</sup> because:

*The State failed to conduct acceptable legal proceedings regarding the La Rochela Massacre with due diligence, failed to ensure the right to judicial access to know the truth of the events, and failed to provide adequate reparations for the deceased victims' next of kin.<sup>97</sup> Article 25 (Right to Judicial Protection) requires states to provide effective judicial recourses to victims of human rights violations, and such recourse must be provided in conformity with the due process of law in light of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>98</sup> These rights to judicial access must secure the right of the victims and their next of kin to have every action taken so that the truth of the events are uncovered within a reasonable time, and require that those found responsible be punished.<sup>99</sup> The Right to Truth is implied in Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas), and both rights are subsumed under Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection of the Convention).<sup>100</sup> These Articles provide the right of victims and their next of kin to expect the State to conduct investigations and court proceedings to unearth the truth and responsibility of the events.<sup>101</sup> The Court thus found that these Articles were violated because the proceedings held in the State's ordinary criminal courts, the military criminal courts, disciplinary courts, and administrative courts were inadequate.<sup>102</sup>*

*Regarding the ordinary criminal court proceedings, the Court found the proceedings inadequate because of a lack of due diligence in the investigations;<sup>103</sup> the threats against judges, witnesses, and next of kin;<sup>104</sup> impermissible obstacles and obstructions to legal processes;<sup>105</sup> and unjust-*

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96. *Id.* ¶¶ 142-225.

97. *Id.* ¶ 155.

98. *Id.* ¶ 145.

99. *Id.* ¶ 146.

100. *Id.* ¶ 147.

101. *Id.*

102. *Id.* ¶ 142.

103. *Id.* ¶ 155.

104. *Id.* ¶ 165.

105. *Id.* ¶ 172.

tified delays in conducting procedural activities.<sup>106</sup> The main standard applied to all of these deficiencies is the due diligence standard,<sup>107</sup> which requires that the body investigating a human rights violation use all available means to carry out justice within a reasonable time.<sup>108</sup>

The State's ordinary criminal court investigations lacked due diligence for several reasons. First, during the eighteen years of investigations and proceedings, only six members of the Los Masetos paramilitary group, one leader of an affiliated paramilitary group, and one soldier have been convicted.<sup>109</sup> Second, the Office of the Attorney General failed to take into account the relationship between the La Rochela Massacre and the disappearances of the 19 Tradesmen case, which resulted in the exclusion of two individuals from the investigation.<sup>110</sup> Third, attempts were only made to identify low-ranking officers of the security forces involved in the massacre, even where the responsibility of security force commanders was clear.<sup>111</sup> Furthermore, the Court found a lack of due diligence of the State to prevent threats against judges, witnesses, and next of kin because the State failed to recognize the network of individuals who executed the massacre, which consequently instilled fear in investigators, witnesses, and next of kin.<sup>112</sup> Moreover, the Court found that the investigations into the La Rochela Massacre encountered obstacles while some individuals implicated in the massacre were captured and made to appear before judges.<sup>113</sup> Other unnecessary obstacles include the fact that two civilians accused of murder have not been captured and the State has not taken adequate steps to capture these individuals, nor identified specific obstacles which have prevented their capture.<sup>114</sup> Lastly, the Court found unjustified delays in conducting procedural activities during the judicial proceedings of the State's ordinary criminal courts.<sup>115</sup> Specifically, the investigations were idle for six years; it took approximately fourteen years to comply with an order to produce documents; it took seven years to comply with an order to investigate a retired Army Major for conspiracy; it took fifteen years to adhere to an appeals court's reversal and remand of a lower court's proceedings

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106. *Id.* ¶ 176.

107. *Id.* ¶ 156.

108. *Id.*

109. *Id.* ¶ 159.

110. *Id.* ¶ 162.

111. *Id.* ¶ 163.

112. *Id.* ¶ 165.

113. *Id.* ¶ 172.

114. *Id.* ¶ 173.

115. *Id.* ¶ 176.

against seven persons; and the State's inability to conduct basic procedures during investigations caused further delays.<sup>116</sup>

Regarding the military criminal court proceedings, the State found those proceedings deficient because the military court that tried an army lieutenant for murder lacked jurisdiction and violated the principle of a competent, independent, and impartial court.<sup>117</sup> The court lacked jurisdiction because military criminal courts should be limited to adjudicating members of the armed forces that commit crimes that directly affect the rights and duties inherent to the military system.<sup>118</sup> The court did not have jurisdiction because the army lieutenant participated in the La Rochela Massacre, which directly affected the rights of individuals outside of the military system.<sup>119</sup> This demonstrates a lack of due diligence because it impeded the investigation into the lieutenant's conduct for seventeen years, which also affected the determination as to which inferior soldiers participated in the La Rochela Massacre.<sup>120</sup>

The Court also found deficiencies in the disciplinary court proceedings, which attempted to correct the inadequacies of the ordinary criminal courts, because they did not produce satisfactory changes or improvements.<sup>121</sup>

Lastly, the Court found the proceedings in the administrative courts inadequate.<sup>122</sup> The legal standard for evaluating these courts is whether the courts' decisions effectively punished those responsible, discontinued the occurrence of the harmful acts, and guaranteed the rights protected by the Convention.<sup>123</sup> Although the State's administrative courts compensated some victims, this is not the only matter that could have been settled at these courts.<sup>124</sup> The administrative courts failed to render any statement on the State's responsibility for the violation of rights such as the rights to life and to personal integrity,<sup>125</sup> and also failed to address other issues, such as rehabilitation, the salvaging of lost histor-

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116. *Id.*

117. *Id.* ¶ 204.

118. *Id.* ¶ 200.

119. *Id.* ¶ 204.

120. *Id.* ¶ 203.

121. *Id.* ¶ 214.

122. *Id.* ¶ 216.

123. *Id.* ¶ 217.

124. *Id.* ¶ 216.

125. *Id.*

ical memory, or measures to prevent repetition.<sup>126</sup>

*As a result of the inadequacies of the ordinary criminal, military, disciplinary, and administrative proceedings, the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), 25 (Right to Judicial Protection), and the Right to Truth, in relation to Article 1(1) (Obligation To Respect Rights) of the Convention, to the detriment of the fifteen victims and their next of kin.*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Sergio García Ramírez

Judge Sergio García Ramírez concurred with the Court's majority by commending, as well as critiquing, its use of legal analysis in reaching its decision.<sup>127</sup> Judge García Ramírez made two observations.<sup>128</sup> First, the Court properly used established legal concepts not directly within the jurisprudence of the Court.<sup>129</sup> Second, the Court continued a troubling trend of not conducting a full legal analysis of international responsibility when a State admits to human rights violations.<sup>130</sup>

Judge García Ramírez noted two examples in the Judgment of the Court's use of juridical concepts from other legal disciplines.<sup>131</sup> First, the Court invoked precedent from the European Court in the cases of *Makaratzis v. Greece* and *Acar and Others v. Turkey* when analyzing the violations of the right to life of people not deceased.<sup>132</sup> The Court also used the concept of attempted homicide to determine the State's culpability.<sup>133</sup> Essentially borrowing from the legal rationales of other juridical bodies and disciplines was an appropriate practice for the Court to employ.<sup>134</sup> However, the issue of how much the Court should use other disciplines within their rationales is a matter that needs to be evaluated in future cases.<sup>135</sup>

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126. *Id.*

127. *La Rochela Massacre v. Colombia, Merits, Reparations, Costs, and Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007).*

128. *Id.* ¶¶ 1-16.

129. *Id.* ¶ 3.

130. *Id.* ¶¶ 13-16.

131. *Id.* ¶¶ 4, 7.

132. *Id.* ¶ 4.

133. *Id.* ¶ 7.

134. *Id.* ¶ 5.

135. *Id.* ¶ 9.

Judge García Ramírez expressed concern with the Court's practice of acknowledging State admissions without fully analyzing the State's international responsibility.<sup>136</sup> The Court only analyzed the acknowledgment of State responsibility in terms of confession and acquiescence, but did not adequately analyze international responsibility.<sup>137</sup>

#### IV. REPARATIONS

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

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

###### 1. Honor the Partial Agreement on Reparations

The Court ordered that the partial agreement on reparations, made between the parties prior to the Court's ruling on the merits, be honored.<sup>138</sup> The agreement provided measures for honoring the memory of the victims, publication of the Court's judgment, and educational support to the victims and their next of kin.<sup>139</sup>

###### 2. Investigate and Punish

The Court ordered the State to effectively conduct both current and future criminal proceedings, and to adopt all necessary measures to clarify the events in this case in order to identify those responsible for the violations within a reasonable time.<sup>140</sup> The State must publicize the findings in such proceedings to enable the Colombian society to know the truth regarding the events of the La Rochela Massacre.<sup>141</sup>

###### 3. Protection of Judicial Officials, Witnesses, Victims and their Next of Kin

The Court ordered the State to provide its judicial officers, prose-

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136. *Id.* ¶ 13.

137. *Id.* ¶ 16.

138. *La Rochela Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 281 (May 11, 2007).*

139. *Id.* ¶ 277.

140. *Id.* ¶ 295.

141. *Id.*



cutors, investigators, and other justice officials with an adequate security and protection system so that they may perform their duties with due diligence.<sup>142</sup> Furthermore, the State must ensure effective protection of witnesses, victims, and relatives in cases of serious human rights violations, especially with regard to the investigations of the La Rochela Massacre.<sup>143</sup>

#### 4. Provide Medical Treatment

The Court ordered the State to provide medical and psychological treatment through its specialized institutions of health to the deceased victims' next of kin, and the surviving victim, Mr. Arturo Salgado Garzón, and his next of kin.<sup>144</sup>

#### 5. Train State Officials in Human Rights

The Court ordered the State to implement permanent training programs on human rights for the State Armed Forces.<sup>145</sup>

### *B. Compensation*

#### 1. Pecuniary Damages

The Court awarded compensatory payments for loss of income of the twelve deceased victims: \$280,000 to Ms. Morales Caro; \$265,000 to Mr. Beltrán Palomino; \$230,000 to Mr. Hernández Serrano; \$230,000 to Mr. Castillo Zapata; \$160,000 to Mr. Hernández Muñoz; \$160,000.00 to Mr. Monroy Ramírez; \$150,000 to Mr. Vesga Fonseca; \$150,000 to Mr. Morales Cepeda; \$150,000 to Mr. Guasca Castro; \$150,000 to Mr. Morales Cárdenas; \$100,000 to Mr. Mejía Duarte; and \$100,000 to Mr. Vargas Páez.<sup>146</sup>

The sum shall be distributed among the next of kin of the deceased victims in the following manner: fifty percent of the compensation shall be distributed equally among the victim's children; fifty percent of the compensation shall be paid to the victim's spouse or permanent companion at the time of the victim's death; if a victim did not have any children, or spouse or permanent companion, fifty percent of the com-

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142. *Id.* ¶ 297.

143. *Id.*

144. *Id.* ¶ 302.

145. *Id.* ¶ 303.

146. *Id.* ¶ 248.

pensation 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 shall be distributed equally among the victim's siblings; and in the absence of any relatives in any of the aforementioned sections above, any amounts to which they would have been entitled shall be distributed to the rest in proportion to their entitlements.<sup>147</sup>

## 2. Non-Pecuniary Damages

The Court awarded \$100,000 for each of the twelve deceased victims.<sup>148</sup> The Court awarded the following to the next of kin of the declared victims: \$70,000 for each son or daughter; \$70,000 for the grandson of deceased victim Mr. Samuel Vargas Páez; \$70,000 for each spouse or permanent companion; \$70,000 for each father and mother; and \$15,000 for each brother and sister.<sup>149</sup> Additionally, the Court awarded \$100,000 to Mr. Arturo Salgado Garzón,<sup>150</sup> \$30,000 to Ms. Paola Martínez Ortiz, and \$30,000 to Ms. Blanca Herrera Suárez,<sup>151</sup> which the State may discount the amounts that it ordered in the domestic administrative proceedings for "moral damages."<sup>152</sup>

## 3. Costs and Expenses

The Court found that, due to the circumstances and number of victims in the present case, the State must reimburse the costs and expenses of the representatives in the amount of \$20,000 to the "José Alvear Restrepo" Legal Cooperative and \$5,000 to CEJIL.<sup>153</sup>

## 4. Total Compensation (including Costs and Expenses ordered):

\$7,800,000<sup>154</sup>

## C. Deadlines

The State must comply with the obligations to provide compensa-

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147. *Id.* ¶¶ 237(a)-(d).

148. *Id.* ¶ 273(a).

149. *Id.* ¶¶ 273(a)-(b).

150. *Id.* ¶ 269.

151. *Id.* ¶ 268.

152. *Id.* ¶ 270.

153. *Id.* ¶ 306.

154. The State must also pay all future costs stated under the section on Measures of Satisfaction and Non-Repetition Guarantee. *See id.* ¶¶ 277-303.

tion in the form of pecuniary damages, non-pecuniary damages, and costs and expenses within one year from the date of service of the Judgment.<sup>155</sup> The State must honor the partial agreement on reparations within six months.<sup>156</sup> The State must investigate the facts and punish those responsible and train State officials in human rights within a reasonable time.<sup>157</sup> The Court notes that the State must protect witnesses, victims, and relatives of victims particularly and immediately.<sup>158</sup> The State must also provide the Court with a report on its performance of reparations obligations within one year of the Court's Judgment issued May 11, 2007.<sup>159</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

**September 3, 2007:** The State filed a request for Interpretation of the Judgment on the Merits, Reparations, and Costs to clarify some of the reparations required.<sup>160</sup>

##### *A. Composition of the Court*

Sergio García Ramírez, President  
Cecilia Medina Quiroga, Vice President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

##### *B. Merits*

First, the State asked if the amount paid to Ms. Paola Martínez Ortiz and Ms. Blanca Herrera Suárez in the domestic proceedings must be deducted out of the \$30,000 ordered in the Court's judgment for non-

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155. *Id.* ¶¶ 251, 274, 306.

156. *Id.* ¶ 282.

157. *Id.* ¶¶ 287, 303.

158. *Id.* ¶ 297.

159. *Id.* ¶ 313.

160. *La Rochela Massacre v. Colombia*, Interpretation of the Judgment of Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 1 (Jan. 28, 2008).

pecuniary damages.<sup>161</sup> The Court stated that the State may deduct the amount compensated to Ms. Martínez Ortiz and Ms. Herrera Suárez in the domestic proceedings from the \$30,000 ordered in the Court's Judgment.<sup>162</sup>

Second, the State asked what is required to fulfill the Court's order to release the results of the criminal proceedings to the public.<sup>163</sup> The Court stated that final criminal judgments ending the proceedings and resolving the main controversies must be made public so that society may know the facts and those responsible for them.<sup>164</sup>

Third, the State asked whether it can deliver payment of the costs and expenses of \$2,000 for each family group of the deceased victims and for Mr. Salgado Garzón to the representatives that argued before the Court, or whether the payment has to be made directly to the person the family group appoints to collect the payment.<sup>165</sup> Additionally, the State asked what to do if the family group does not appoint a representative.<sup>166</sup> The Court stated that payment must be delivered directly to the family groups and Mr. Salgado Garzón or their appointed representatives.<sup>167</sup> In response to the second request, the Court stated that if the State is unable to deliver the payments because the beneficiaries do not make available their delivery information or appoint a representative, the State shall deposit the payment into an account of a solvent Colombian financial institution for ten years; then it shall be returned to the State, plus the accrued interest, if unclaimed.<sup>168</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**August 26, 2010:** The Court found that the State partially complied with certain obligations stipulated in the judgment on the Merits, Reparations, and Costs.<sup>169</sup>

First, the Court found that the State partially complied with the partial agreement on reparations made between the parties prior to the Court's ruling on the merits.<sup>170</sup> Specifically, the State partially complied

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161. *Id.* ¶ 11.

162. *Id.* ¶ 21.

163. *Id.* ¶ 22.

164. *Id.* ¶ 27.

165. *Id.* ¶ 28.

166. *Id.*

167. *Id.* ¶ 32.

168. *Id.* ¶ 33.

169. *La Rochela Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Aug. 26, 2010).*

170. *Id.* "Considering That" ¶¶ 8-53.

with the obligation to install a plaque and a photographic gallery at the Courthouse of San Gil municipality by making the plaque ready for installation in the courthouse since April 2009, but the representatives of the victims did not propose a date to carry out the obligation.<sup>171</sup> The State partially complied with the obligation to install a plaque in the Paloquemao judicial complex in Bogotá by making the plaque ready for installation for more than a year, but the representatives of the victims did not propose a date to carry out that obligation.<sup>172</sup> The Court urged the representatives of the victims to communicate the plaque proposal to the State within three months of this Order.<sup>173</sup> The State did not comply with the obligation to modify the text and relocate the commemorative plaque at the Office of the Public Prosecutor, because none of the parties forwarded information on this measure.<sup>174</sup> The Court ordered the parties to provide detailed information on the matter.<sup>175</sup> The State partially complied with its obligation to set up a diploma in human rights that includes a study of the La Rochela Massacre, because the State did not progress toward compliance with this measure and it did not provide updated information about full compliance.<sup>176</sup> The Court ordered the parties to provide updated detailed information on the matter.<sup>177</sup> The State partially complied with the obligation to set up a scholarship for a specialization in human rights named to evoke the memory of the victims, because the State did not take steps to make progress towards compliance with this measure, but both parties did not provide updated information about full compliance.<sup>178</sup> The Court ordered the parties to provide updated detailed information on the matter.<sup>179</sup> The State fully complied with its obligation to publish the facts of the La Rochela Massacre by publishing a book and helping with its dissemination.<sup>180</sup> The State fully complied with the obligation to request the Supreme Council of the Judiciary to give the Courthouse of the Municipality of San Gil a name that evokes the memory of the victims, because the State, although unsuccessful, complied with the “best efforts” obligation and even took actions beyond compliance by naming a small square of the

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171. *Id.* “Considering That” ¶ 11.

172. *Id.* “Considering That” ¶ 15.

173. *Id.*

174. *Id.* “Considering That” ¶ 20.

175. *Id.*

176. *Id.* “Considering That” ¶ 24.

177. *Id.*

178. *Id.* “Considering That” ¶ 28.

179. *Id.*

180. *Id.* “Considering That” ¶ 32.

Courthouse “Mártires de la Justicia de la Rochela.”<sup>181</sup> The State fully complied with the obligation to publish a summary of the key elements in the instant case in a widely circulated national newspaper.<sup>182</sup> It also fully complied with the obligation to refer the Court’s Judgment to the National Reparations and Reconciliation Commission.<sup>183</sup> The State partially complied with the obligation to continue providing scholarships to the victims’ next of kin, because the State has been fulfilling this obligation, but it was necessary for the State to present information on continued compliance in 2010.<sup>184</sup> It also partially complied with the obligation to offer job vacancies at the Colombian Prosecutor’s Office to the victims and their next of kin, because the State has been fulfilling this obligation, but it was necessary for the State to present information on continued compliance in 2010.<sup>185</sup>

Second, the Court found that the State partially complied with the obligation to investigate the facts, prosecute, and punish those responsible.<sup>186</sup> The State took steps to convict two people, and to investigate fourteen mostly former paramilitary members and former state agents.<sup>187</sup> The Court noted that although progress has been made with investigation and punishment, the State should continue investigating in order to determine all those responsible for the La Rochela Massacre.<sup>188</sup> The Court noted that in order for the State to continue to comply it must include information related to the preliminary examination statements taken; the apprehension orders pending execution; indicate whether the investigation has been referred to the Supreme Court of Justice and the progress made in such investigation; and explain on what charges former Lieutenant Luis Enrique Andrade Ortiz is being investigated.<sup>189</sup>

Third, the Court found that the State partially complied with the obligation to protect the justice administrators, witnesses, victims, and next-of-kin.<sup>190</sup> The State adopted measures to evaluate and reform the operation of its protection system, but the Court requested the State to present updated information on the progress made in said reforms and its efficacy.<sup>191</sup>

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181. *Id.* “Considering That” ¶ 36.

182. *Id.* “Considering That” ¶ 40.

183. *Id.* “Considering That” ¶ 45.

184. *Id.* “Considering That” ¶ 49.

185. *Id.* “Considering That” ¶ 53.

186. *Id.* “Considering That” ¶¶ 54-66.

187. *Id.* “Considering That” ¶ 61.

188. *Id.*

189. *Id.* “Considering That” ¶ 66.

190. *Id.* “Considering That” ¶ 67-70.

191. *Id.* “Considering That” ¶ 70.

Fourth, the Court was not ready to rule on the State's obligation to provide medical and psychological treatment for the victims, because the Court planned on ruling at the same time as seven other Colombian cases about the same issue when information on all of the cases becomes available.<sup>192</sup>

Fifth, the Court found that the State fully complied with its obligation to provide training in human rights education within the State Armed Forces.<sup>193</sup> The Court noted that the reparation measures ordered in the instant case were similar to the training measures that the State was ordered to implement in the cases of the *Mapiripán Massacre v. Colombia* and the *Ituango Massacre v. Colombia*.<sup>194</sup> The Court deemed the State in compliance in the aforementioned cases, and consequently found compliance in the instant case since they relate to the same subject matter.<sup>195</sup>

Sixth, the Court found that the State partially complied with the obligation to compensate and reimburse costs and expenses.<sup>196</sup> The Court ordered more information to determine whether the amounts the State deducted as taxes in compensating the victims were adequately returned. The Court also ordered the State to provide information regarding claims made by the brother of one of the victims, Mr. Castillo Zapata, who stated that his mother and father had received smaller amounts than their entitlement for lost income. The Court also ordered the State to forward a copy of Resolutions N° 1468 and N° 2608 of the Interior and Justice Ministry and any other information confirming the settlement and payment of the compensation owed to victims Mr. Beltrán Palomino, Mr. Monroy Ramirez, Mr. Vesga Fonseca, Mr. Mejia Duarte, and their next-of-kin.<sup>197</sup>

**February 8, 2012:** The Court set a hearing date of February 23, 2012 to obtain information from the State regarding its compliance with measures of reparation concerning the hearing on compliance held August 26, 2010.<sup>198</sup>

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192. *Id.* "Considering That" ¶ 72.

193. *Id.* "Considering That" ¶ 80.

194. *Id.* "Considering That" ¶ 76.

195. *Id.* "Considering That" ¶ 80.

196. *Id.* "Considering That" ¶ 92.

197. *Id.*

198. *La Rochela Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (Feb. 8, 2012).*

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

[La Rochela Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 163 \(May 11, 2007\).](#)

[La Rochela Massacre v. Colombia, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 163 \(May 11, 2007\).](#)

## 3. Provisional Measures

[La Rochela Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., Case No. 11.995 \(Nov. 19, 2009\).](#)

## 4. Compliance Monitoring

[La Rochela Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Feb. 8, 2012\).](#)

[La Rochela Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 26, 2010\).](#)

## 5. Review and Interpretation of Judgment

[La Rochela Massacre v. Colombia, Interpretation of the Judgment of Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 163 \(Jan. 28, 2008\).](#)

*B. Inter-American Commission*

## 1. Petition to the Commission

La Rochela Massacre v. Colombia, Petition No. 11.995, Inter-Am.



Comm'n H.R. (Oct. 8, 1997).

## 2. Report on Admissibility

[La Rochela Massacre v. Colombia, Admissibility Report, Report No. 42/02, Inter-Am. Comm'n H.R., Case No. 11.995 \(Oct. 2, 2002\).](#)

## 3. Provisional Measures

[La Rochela Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., Case No. 11.995 \(Nov. 19, 2009\).](#)

## 4. Report on Merits

[None]

## 5. Application to the Court

[La Rochela Massacre v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.995 \(Mar. 10, 2006\) \(Available only in Spanish\).](#)

## VIII. BIBLIOGRAPHY

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