

Mapiripán Massacre v. Colombia

ABSTRACT¹

This case is about the massacre of at least forty-nine individuals in Mapiripán, Colombia, by members of the Autodefensas Unidas de Colombia (“AUC”), a paramilitary group, aided and abetted by the Colombian military. The massacre is part of the ongoing internal conflict and the fights against the Fuerzas Armadas Revolucionarias de Colombia. The State eventually admitted partial responsibility during proceedings before the Court.

I. FACTS

A. Chronology of Events

December 24, 1965: In response to the growth of leftist guerrilla militia, the State fosters the creation of civilian self-defense groups to assist the national armed forces in an effort to defend themselves from militia threats.²

1980s: Many of the self-defense groups transition into criminal organizations primarily dealing in the State drug trade.³ These groups become known as “the paramilitary.”⁴

January 27, 1988: In response to the growing problem of paramilitary groups, the State makes it a crime to organize with hired assassins and to traffic military munitions.⁵

April 29, 1989: The State suspends legislation allowing private citizens to use weapons previously restricted for use by the Armed Forces.⁶

1. Dale Ogden, Author; Alyssa Rutherford, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶¶ 96.1-96.2 (Sept. 15, 2005).

3. *Id.* ¶ 96.23.

4. *Id.*

5. *Id.* ¶ 96.4.

6. *Id.* ¶ 96.5.

Early 1990s: Paramilitary groups seek control of the strategic area of Mapiripán, in the Meta Department of Colombia, in the center of the country.⁷

July 12, 1997: One hundred paramilitary members, flying aboard irregular flights, land at an airport near Mapiripán.⁸ Several airport dispatchers are tortured for several hours and killed.⁹

The State Army allows the planes carrying paramilitary members to land and does not record their arrival, as required by law.¹⁰ Thereafter, the State Army provides transportation for the paramilitary in vehicles normally reserved for military operations.¹¹ The paramilitary join other paramilitary groups and proceed through various military checkpoints without issue.¹²

July 14, 1997: Upon entering the village of Charras, the paramilitary group United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, "AUC") hands out flyers to the inhabitants threatening to kill anyone who paid taxes to a rival paramilitary group Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, "FARC").¹³

July 15, 1997: More than one hundred paramilitary, armed with weapons and donning uniforms reserved for military forces, surround Mapiripán.¹⁴ Upon arrival, the paramilitary take control of communications, and began kidnapping, killing, and dismembering the inhabitants of Mapiripán, particularly those identified as sympathizers of the FARC.¹⁵ Given the gruesome nature of the murders, authorities are not fully able to identify the victims.¹⁶

During this time, the AUC imprisons many victims' next of kin in their homes, and subsequently forces them into displacement.¹⁷

7. *Id.* ¶ 96.23.

8. *Id.* ¶ 96.30.

9. *Id.* ¶ 96.40.

10. *Id.* ¶ 96.31.

11. *Id.* ¶ 96.32.

12. *Id.*

13. *Id.* ¶ 96.33.

14. *Id.* ¶ 96.34.

15. *Id.* ¶ 96.35.

16. *Id.* ¶ 96.41.

17. *Id.* ¶ 165.

General Jamie Humberto Uscategui Ramirez learns of paramilitary presence in Mapiripán, but takes no action.¹⁸ The Attorney General's Office comments that General Uscategui Ramirez demonstrates "complete functional and operational inactivity, despite knowing about the massacre."¹⁹

Lieutenant Hernán Orozco Castro stated that when it became necessary to send troops to Mapiripán, all available troops had been deployed elsewhere.²⁰ There is, however, no evidence that troops were needed elsewhere at this time.²¹ General Uscategui Ramirez subsequently orders Lieutenant Orozco Castro to cover up this admission of knowledge regarding the existence of the massacre.²²

Furthermore, there is evidence that, during the long and meticulous planning of the massacre, the State knew of the impending attack, but took no action.²³

July 22, 1997: Members of the Armed Forces arrive in Mapiripán, after the arrival of the media.²⁴ Much of the evidence is already destroyed.²⁵

July 23, 1997: Following significant delay due to General Uscategui Ramirez's, Lieutenant Orozco Castro's, and other military members' noncompliance with Judicial Officers, the Public Prosecutors Office is finally able to enter Mapiripán.²⁶ They estimate the victim death count at approximately forty-nine.²⁷

April 7, 1999: The Attorney General files criminal charges against nine individuals, including two members of the Armed Forces.²⁸

August 18, 1999: The High Council of the Judiciary holds that General Uscategui Ramirez and Lieutenant Orozco Castro will face charges of homicide, aggravated kidnappings, falsifying public documents, and terrorism in military court.²⁹

18. *Id.* ¶ 96.37.

19. *Id.* ¶ 96.38.

20. *Id.*

21. *Id.*

22. *Id.* ¶ 96.45.

23. *Id.* ¶ 96.43.

24. *Id.* ¶ 96.42.

25. *Id.*

26. *Id.* ¶ 96.46.

27. *Id.* ¶ 96.48.

28. *Id.* ¶ 96.82.

29. *Id.* ¶ 96.92.

February 12, 2001: The High Military Court convicts General Uscategui Ramirez and Lieutenant Orozco Castro, sentencing them to forty months and thirty-eight months of incarceration respectively, and pecuniary damages.³⁰

April 24, 2001: General Uscategui Ramirez is discharged from the military forces, and Lieutenant Orozco Castro is "severely reprimanded."³¹

June 5, 2001: High Military Court releases General Uscategui Ramirez on bail.³²

June 28, 2002: The National Human Rights and International Humanitarian Law Unit declares the Military Court proceedings null and remands the cases to regular criminal venue.³³ Lieutenant Orozco Castro is also released on bail.³⁴

October 28, 2002: Arrest warrants are issued for Mr. Arnaldo Vergara Trespacios, Mr. Francisco Enríquez Gómez Bergaño, and Mr. Raúl Arango Duque for the crimes of kidnapping, aggravated homicide, terrorism, and conspiracy to commit said crimes.³⁵

March 10, 2003: The National Human Rights and International Humanitarian Law Unit files charges against Lieutenant Orozco Castro, General Uscategui Ramirez, and other Armed Forces members allegedly connected with the massacre.³⁶ The General Jurisdiction Criminal Court again imprisons Lieutenant Orozco Castro and General Uscategui Ramirez.³⁷

June 18, 2003: The military co-conspirators of Lieutenant Orozco Castro and General Uscategui Ramirez are convicted.³⁸ However, as of the time of the Criminal Court's judgment, Lieutenant Orozco Castro and General Uscategui Ramirez are not convicted, but remain under a pend-

30. *Id.* ¶¶ 96.98-96.99.

31. *Id.* ¶ 96.134.

32. *Id.* ¶ 96.102.

33. *Id.* ¶ 96.110.

34. *Id.*

35. *Id.* ¶ 96.113.

36. *Id.* ¶ 96.115.

37. *Id.*

38. *Id.* ¶ 96.117.

ing investigation.³⁹ The co-conspirators appeal their convictions, but their convictions were upheld.⁴⁰

February 1, 2005: The investigation into the murders continues.⁴¹ The State also awards damages to twelve named victims of the massacre.⁴²

B. Other Relevant Facts

In the early 1990s, the FARC and AUC sought control of Mapiripán due to its strategic location for drug trafficking, planting, processing, and trading.⁴³

In 1997, Mapiripán was under the control of the 7th Brigade of the National Colombian Army under the command of General Jaime Humberto Uscátegui Ramírez and Colonel Carlos Eduardo Ávila Beltrán.⁴⁴ There was also a troop known as the 2nd Mobile Brigade (Special Counterinsurgency Operations Command) under the command of Lieutenant Colonel Lino Hernando Sánchez Prado.⁴⁵ From July 8-9, 1997, Colonel Carlos Eduardo Ávila Beltrán was on vacation and replaced by then Major Hernán Orozco Castro.⁴⁶

II. PROCEDURAL HISTORY

A. Before the Commission

October 6, 1999: The Colectivo de Abogados “José Alvear Restrepo” and the Center for Justice and International Law (“CEJIL”) file a complaint before the Commission.⁴⁷

February 22, 2001: The Commission adopts Admissibility Report No. 34/01 and declares the petition admissible.⁴⁸

February 8, 2002: The Commission issues precautionary measures to

39. *See id.* ¶¶ 96.117-96.126.

40. *Id.* ¶¶ 96.117-96.122.

41. *Id.* ¶ 96.126.

42. *Id.* ¶ 96.130.

43. *Id.* ¶¶ 96.22-96.23, 96.27.

44. *Id.* ¶ 96.24.

45. *Id.*

46. *Id.*

47. *Id.* ¶ 5.

48. *Id.* ¶ 6.

protect witnesses to the domestic judicial proceeding.⁴⁹

April 12, 2002: The Commission issues precautionary measures in favor of Lieutenant Colonel Orozco Castro, acting commander of the battalion at the time of the massacre.⁵⁰

March 4, 2003: The Commission adopts Report No. 38/03 and recommends that the State: (1) completely investigate and prosecute all those responsible for the massacre; (2) ensure necessary restitution to those harmed by the violations of the state; and (3) take reasonable steps to avoid similar massacres.⁵¹

B. Before the Court

September 5, 2003: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵²

December 18, 2003: The State appoints Gustavo Zafra Roldán as judge *ad hoc*.⁵³

April 2, 2004: The State files its brief with preliminary objections arguing: (1) the Commission erred in submitting the case to the Court under Articles 50 and 51; and (2) the Commission disregarded the State's objections regarding the failure to exhaust domestic remedies.⁵⁴

February 4, 2005: The President issues an order for urgent provisional measures to protect the lives and ensure the right to humane treatment of the victims and their next of kin.⁵⁵

February 18, 2005: The President of the Court orders the State to submit: (1) all information regarding steps taken by the Special Prosecutor of the Human Rights and International Law Unit of the Government Attorney's Office of Colombia; (2) steps taken regarding the identification of victims; and (3) steps taken against General Jamie Humberto Us-

49. *Id.* ¶ 8.

50. *Id.* ¶ 9.

51. *Id.* ¶ 10; Mapiripán Massacre v. Colombia, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 7 (Mar. 7, 2005).

52. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, ¶¶ 14-15.

53. *Id.* ¶ 19.

54. *Id.* ¶ 21; Mapiripán Massacre v. Colombia, Preliminary Objections, ¶ 13.

55. *Id.* ¶ 49.

categui for his alleged participation in the massacre.⁵⁶

March 7, 2005: The Court holds a public hearing on the preliminary objections where the State acknowledges responsibility.⁵⁷ The State limits this responsibility to the facts as alleged by the Commission.⁵⁸ The State also withdraws its first preliminary objection regarding Articles 50 and 51.⁵⁹

The Court, however, questions the legitimacy of the State's acceptance of responsibility as the State subsequently limits its responsibility from acts not "directly attributable" to State agents.⁶⁰

The Court dismisses the State's second preliminary objection and, in accepting international responsibility, the State implicitly accepted the jurisdiction of the Court in the immediate case.⁶¹

June 27, 2005: The Court issues an order, which ratifies the President's previous provisional measures.⁶² At the time of judgment, these measures are in force.⁶³

1. Violations Alleged by Commission⁶⁴

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) of the American Convention.

56. *Id.* ¶ 30.

57. *Id.* ¶ 35.

58. *Id.* ¶ 55.

59. Mapiripán Massacre v. Colombia, Preliminary Objections, ¶ 20.

60. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, ¶ 68.

61. Mapiripán Massacre v. Colombia, Preliminary Objections, ¶ 30.

62. *Id.* ¶ 50.

63. *Id.*

64. *Id.* ¶ 2.

2. Violations Alleged by Representatives of the Victims⁶⁵

Same Violations Alleged by Commission, plus:

Article 19 (Rights of the Child)

Article 22 (Freedom of Movement and Residence)

all in relation to:

Article 1(1) of the American Convention.

III. MERITS

A. Composition of the Court⁶⁶

Sergio García Ramírez, President

Alirio Abreu Burelli, Vice-President

Oliver H. Jackman, Judge

Antônio Augusto Cançado Trindade, Judge

Manuel E. Ventura Robles, Judge

Gustavo Zafra Roldán, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

September 15, 2005: The Court issues its Judgment on the Merits, Reparations and Costs.⁶⁷

The Court found unanimously that the State had violated:

Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of the victims,⁶⁸ because:

The Court accepted the State's partial admission under international

65. *Id.* ¶ 20. The Colectivo de Abogados “José Alvear Restrepo” and CEJIL serve as representatives of the victims and their next of kin. *Id.* ¶ 17.

66. For reasons of *force majeure*, Judge Cecilia Medina Quiroga and Judge Diego García Sayán could not participate in the deliberation, decision, and signing of the Judgment. *Id.* at n.*.

67. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs.

68. *Id.* ¶ 131.

and domestic law.⁶⁹ Articles 4, 5, and 7 protect the right to life, physical integrity (including the protection against torture), and liberty respectively.⁷⁰ The arbitrary murder of innocent civilians constitutes a *de facto* violation under Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty).⁷¹ Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) may also be violated when a State fails to adequately protect fundamental human rights from actions by a third party.⁷²

First, the State only admitted to its responsibility regarding twelve named individuals, consistent with the domestic proceedings.⁷³ However, as the Court subsequently noted, these domestic proceedings were inadequate.⁷⁴ The Court further noted the State's limited admission was "inconsistent and incompatible" with the State's admission of responsibility for the massacre during which at least forty-nine individuals were murdered.⁷⁵

Second, the State also acknowledged only partial responsibility, as the acts of the paramilitary were not perpetrated by State actors.⁷⁶ As the evidence suggested, General Ramírez and other State actors had positively collaborated with the paramilitary, so the massacre was not merely an omission by the State.⁷⁷ Likewise, the highest court of the State held that State agents were involved in the massacre.⁷⁸ Furthermore, the Court noted the United Nations Human Rights Commissioner documenting "numerous" links between public employees and paramilitary groups.⁷⁹

Lastly, there was evidence that before these murders, many victims were deprived of their liberty and subject to torture and inhumane treatment in violation of Article 5 (Right to Humane Treatment) and 7 (Right to

69. *Id.*

70. *Id.* ¶¶ 126-128.

71. *Id.* ¶¶ 126-129; see Organization of American States, American Convention on Human Rights, Art. 7(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, 126.

72. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, ¶ 111.

73. *Id.* ¶ 133.

74. *Id.* ¶ 137; see *id.* ¶¶ 195-241.

75. *Id.* ¶ 133.

76. See *id.* 110.

77. *Id.* 117.

78. *Id.*

79. *Id.* ¶ 119.

Personal Liberty).⁸⁰ Accordingly, the Court found the State had violated Articles 4 (*Right to Life*), 5 (*Right to Humane Treatment*), and 7 (*Right to Personal Liberty*) with respect to all forty-nine named individuals.⁸¹

Article 5 (*Right to Humane Treatment*) in relation to Article 1(1) of the Convention, to the detriment of the victims' next of kin,⁸² because:

*The Court presumed the extreme mental anguish of the victims' next of kin based on the unique facts of the massacre.*⁸³ *All persons, including next of kin for victims of crimes, have the right to have their mental integrity respected.*⁸⁴ *Furthermore, in circumstances where, due to the responsibility of the State, authorities are not able to identify all next of kin, the Court may presume their extreme mental anguish.*⁸⁵

*Beyond this presumed mental anguish, many next of kin were subjected to terror during the paramilitaries' possession of Mapiripán, and were forced to watch the murders of their family members.*⁸⁶ *Furthermore, due to the inadequate domestic remedies, victims continue to experience, "fear, anguish, and powerlessness."*⁸⁷ *Accordingly, the Court found that the State violated Article 5 (*Right to Humane Treatment*) to the detriment of all named and unnamed next of kin.*⁸⁸

Article 19 (*Rights of the Child*) in relation to Article 1(1) of the Convention, to the detriment of victimized and displaced children,⁸⁹ because:

*The State failed to adequately protect the victimized and displaced children.*⁹⁰ *Article 19 (*Rights of the Child*) established that "[e]very minor child has the right to the measures of protection required by his condi-*

80. *Id.* ¶ 136.

81. *Id.* ¶ 138.

82. *Id.* ¶ 140.

83. *Id.* ¶ 146.

84. See Organization of American States, American Convention on Human Rights, Art. 5(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, 125.

85. Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, ¶ 146.

86. *Id.* ¶ 142.

87. *Id.* ¶ 143.

88. *Id.* ¶ 146.

89. *Id.* ¶ 147.

90. *Id.* ¶ 163.

tion as a minor on the part of his family, society, and the state.”⁹¹ The obligation of the State to respect the right to life of every person under its jurisdiction takes on special aspects in the case of children, and it becomes an obligation to “prevent situations that might lead, by action or omission, to breach it.”⁹² The Court further noted that children are in a uniquely vulnerable situation.⁹³ Consequently, special measures are affirmatively required by the State to protect children during armed conflicts.⁹⁴

Here, the United Nations Commission for Human Rights noted that children in the State suffer the consequences of armed conflict more severely.⁹⁵ Colombian children during the massacre were victims of the massacre itself, were orphaned, and many had their psychological and physical integrity harmed.⁹⁶ Furthermore, the State was “fully aware” that the Mapiripán was a violent area, yet took no steps to protect children in the region.⁹⁷ Consequently, the Court found the State had violated Article 19 (Rights of the Child) with respect to the children.⁹⁸

Article 22 (Freedom of Movement and Residence) in relation to Article 1(1) of the Convention, to the detriment of the next of kin of the victims,⁹⁹ because:

*The next of kin of the victims were forced into displacement, and not allowed to return home.*¹⁰⁰ Freedom of movement is an indispensable human right.¹⁰¹ Article 22 (Freedom of Movement and Residence) provides “[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”¹⁰²

A violation of Article 22 (Freedom of Movement and Residence) can be established through a State’s acquiescence in failing to ensure the nec-

91. *Id.* ¶ 150.

92. *Id.* ¶ 162.

93. *Id.* ¶ 148(a).

94. *Id.* ¶ 148(b).

95. *Id.* ¶ 157.

96. *Id.* ¶¶ 155, 161.

97. *Id.* ¶ 159.

98. *Id.* ¶ 163.

99. *Id.* ¶ 189.

100. *Id.*

101. *Id.* ¶ 168.

102. *Id.* ¶ 167.

essary conditions for freedom of movement.¹⁰³ Also, Article 22 (*Freedom of Movement and Residence*) can be violated when a State fails to criminally prosecute culpable individuals, resulting in the forced displacement of innocent individuals.¹⁰⁴

In the instant case, freedom of movement was restricted while the paramilitary remained in Mapiripán.¹⁰⁵ Subsequently, following death threats and attempts on individuals' lives, many were forced into displacement.¹⁰⁶ Likewise, the Constitutional Court of Colombia was alarmed by the number of internal displacements following intimidation and death threats by the paramilitary.¹⁰⁷ Accordingly, through the State's failure to establish the necessary conditions for freedom of movement and failure to adequately prosecute, the Court found the State had violated Article 22 (*Freedom of Movement and Residence*) with respect to the victim's next of kin.¹⁰⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of the victims and next of kin,¹⁰⁹ because:

*The State failed to adequately ensure judicial guarantees, and prosecute the responsible individuals.*¹¹⁰ Articles 8(1) (*Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal*) and 25 (*Right to Judicial Protection*) provide all persons to due process, within a reasonable time, through an impartial, competent tribunal.¹¹¹

*In 1999, the court of military jurisdiction imprisoned General Usategui Ramirez for forty months, and Lieutenant Colonel Orozco Castro for thirty-eight months, also imposing monetary fines.*¹¹² In 2002, the Colombian Constitutional Court then resolved the jurisdictional issue, reversed the convictions, and remanded the case to a regular jurisdic-

103. *Id.* ¶170.

104. *Id.*

105. *Id.* ¶ 169.

106. *Id.*

107. *Id.* ¶¶ 174, 180.

108. *Id.* ¶ 189.

109. *Id.* ¶ 241.

110. *Id.*

111. *Id.* ¶¶ 193-194.

112. *Id.* ¶ 200.

tion criminal court.¹¹³ However, this three-year delay was unnecessary as the jurisprudence establishing the proper venue already existed at the time of the original military proceedings.¹¹⁴ At the time of the decision, more than eight years have passed, and the proceedings remain open.¹¹⁵

Furthermore, during the investigation the army failed to cooperate with judicial investigators.¹¹⁶ The judicial authorities were negligent by failing to timely gather evidence, leading to the loss of much evidence.¹¹⁷ While some administrative procedures have occurred, these were inadequate to compensate the victims because many were not included (as much of the evidence was lost) and the monetary sums were quite low.¹¹⁸

While the Court noted the situation in the State is difficult, and appreciated the effort made by some State actors, this does not absolve the State of its responsibilities under Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection).¹¹⁹ Accordingly, the Court found the State had violated Articles 8(1) and 25 with respect to the victims and next of kin.¹²⁰

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Antônio Augusto Cançado Trindade addressed three areas: (1) the scope of duties under Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) are broad; (2) the State's responsibility goes beyond "tolerance" of the dangerous paramilitary conditions; and (3) the establishment of international "law" rather than treaties may be required to stop the modern trend of massacres.¹²¹

113. *Id.* ¶ 205.

114. *Id.* ¶¶ 204-206.

115. *Id.* ¶ 222.

116. *Id.* ¶ 227.

117. *Id.* ¶ 228.

118. *Id.* ¶ 214.

119. *Id.* ¶ 238.

120. *Id.* ¶ 241.

121. Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 1

First, Judge Cançado Trindade noted the State's responsibilities are very broad with respect to the duties imposed by Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights).¹²² Judge Cançado Trindade contends these articles are violations in themselves, rather than the additional role they play "in respect" to other articles they constitute under the Court's current jurisprudence.¹²³

Second, Judge Cançado Trindade noted the State's responsibilities went far beyond mere tolerance of the dangerous conditions of paramilitaries.¹²⁴ Rather, the massacre involved State actors who participated in the violence itself, and consequently the State's responsibility goes far beyond tolerance and omissions.¹²⁵

Finally, Judge Cançado Trindade noted the modern trend of hearing cases involving massacres and other egregious violations of human rights in courts of international jurisdiction.¹²⁶ This state-centered approach risks serious anachronistic and arbitrary enforcement of human rights and criminal violations.¹²⁷ Consequently, Judge Cançado Trindade called for true courts of international jurisdictions, which merge criminal and human rights jurisdiction to ensure the consistent and effective delivery of justice.¹²⁸

2. Concurring Opinion of Judge *Ad Hoc* Gustavo Zafra Roldán

In a separate opinion, Judge *ad hoc* Gustavo Zafra Roldán made four arguments: (1) the domestic attempt regarding good faith civil settlements should be taken into account in the Court's monetary award;¹²⁹ (2) the strictly humanitarian aid provided by the State should not be taken into account when awarding damages;¹³⁰ (3) the establishment of a "trust like" method of compensating the victims would be a more efficient system than the one set in place by the Court's reparations;¹³¹ and

(Nov. 27, 2008).

122. *Id.* ¶ 2.

123. *Id.* ¶ 7.

124. *Id.* ¶ 15.

125. *Id.*

126. *Id.* ¶ 30.

127. *Id.* ¶ 31.

128. *Id.* ¶ 32.

129. *Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Ad Hoc Gustavo Zafara Roldán, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 1 (Nov. 27, 2008).*

130. *Id.* ¶ 2.

131. *Id.* ¶ 4.

(4) the State should officially recognize the invalidation of its domestic proceedings as signatories to the American Convention.¹³²

IV. REPARATIONS

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

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

1. Identify, Prosecute, and Punish Those Responsible

The Court required that the State fully prosecute the individuals and State actors responsible for the massacre.¹³³ Particularly, the State must remove all *de facto* barriers to criminal prosecution, and provide the security necessary to ensure that judicial and prosecutorial agents are not killed during the process.¹³⁴ The State must make these results known to the public.¹³⁵

2. Identify the Victims

Given the failure to investigate by the State, the Court found it difficult to identify the victims throughout its decision.¹³⁶ Consequently, the State must publish, through national television, radio, and newspaper, the attempt to identify victims.¹³⁷ The State must also establish a genetic information system to enable the identification and compensation of the victims.¹³⁸

3. Official Monitoring of Compliance

The Court required the State to establish a system to: (1) monitor the relevant administrative law proceedings; (2) ensure effective payment of the victims; (3) follow up with the victims individually; (4) ensure proper treatment of victims; and (5) ensure the safe return of the

132. *Id.* ¶ 8.

133. *Mapiripán Massacre v. Colombia, Merits, Reparations and Costs*, ¶ 295.

134. *Id.* ¶ 299.

135. *Id.* ¶ 298.

136. *Id.* ¶¶ 305-306.

137. *Id.* ¶ 306.

138. *Id.* ¶ 308.

victims to Mapiripán, should they chose to do so.¹³⁹

4. Provide Medical Treatment

The Court required that the State provide psychological treatment, including all necessary medications to the victims.¹⁴⁰

5. Ensure Safe Return of Victims

The Court required that the State establish the necessary conditions for a safe return to Mapiripán, should the victims decide to do so.¹⁴¹

6. Publicly Apologize

The Court acknowledged the State's apology and partial acceptance of international responsibility at the public hearing.¹⁴²

7. Establish a Memorial

The Court required that the State establish a memorial in the appropriate place remembering the facts of the Mapiripán Massacre.¹⁴³

8. Educate State Agents in Human Rights

Bearing in mind the Mapiripán Massacre involved State agents, the Court required that the State educate all its armed forces in international humanitarian law and its responsibilities therein.¹⁴⁴

9. Publish the Judgment

Finally, the Court required that the State publish the Court's decision in the national gazette.¹⁴⁵

139. *Id.* ¶ 311.

140. *Id.* ¶ 312.

141. *Id.* ¶ 313.

142. *Id.* ¶ 314.

143. *Id.* ¶ 315.

144. *Id.* ¶ 316.

145. *Id.* ¶ 318.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

Based on the age and earning capacity of nine identified victims of the massacre, the Court awarded their next of kin a total of \$985,000.¹⁴⁶

2. Non-Pecuniary Damages

Taking into account the mental anguish, loss of loved ones, the brutality of the manner of death, and the threats the paramilitary issued against many next of kin, the Court awarded the next of kin a total of \$2,661,000.¹⁴⁷

3. Costs and Expenses

The Court ordered the State pay \$20,000 and \$5,000 to reimburse costs incurred by the Colectivo de Abogados “Jose Alvear Restrepo” and CEJIL, respectively, for costs incurred representing the victims at both the national and international levels.¹⁴⁸

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

\$ 3,671,000

C. Deadlines

The State must identify, prosecute, and punish those responsible diligently.¹⁴⁹

The State must publish its attempt to identify the victims, establish a reparations monitoring system, and publish the pertinent parts of the Judgment within six months of notification of the Judgment.¹⁵⁰

The State must provide medical treatment to those who request it

146. *Id.* ¶¶ 263(d), 278. The Court lacked evidence to determine the lost earning capacities of the majority of identified victims. *Id.*

147. *Id.* ¶¶ 280(a), 290.

148. *Id.* ¶ 325.

149. *Id.* ¶ 304.

150. *Id.* ¶¶ 307, 311, 318.

immediately upon notification of the Judgment.¹⁵¹

The State must establish a memorial within one year of notification of the Judgment.¹⁵²

The State must educate its agent on international human rights law within a reasonable time.¹⁵³

The State must pay all pecuniary and non-pecuniary damages and costs and expenses to the designated party within one year of notification of the Judgment.¹⁵⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 26, 2008: In response to the State's contention that two victims identified in the judgment, Mr. Omar Patiño Vaca and Mr. Eliécer Martínez Vaca, were not actually victims of the massacre, the Court requested additional documentation supporting this claim.¹⁵⁵

The Court held that the State partially complied with its obligation to create a mechanism to implement the reparations contained within the Judgment.¹⁵⁶ It recognized the State's creation of the Official Mechanism to Monitor Reparations (*Mecanismo Oficial de Seguimiento de las Reparaciones*, "M.O.S Mapiripán") through the act of the Permanent Intersectorial Commission of Human Rights on February 28, 2006, but requested additional information concerning the functions and operations of this committee.¹⁵⁷

Additionally, the Court requested that the State continue to submit materials demonstrating its efforts to identify and prosecute those responsible for the massacre and to identify additional victims.¹⁵⁸ As of the date of this report, the State was underway in coordinating between the MOS and judicial channels to render justice as required by the Judgment and requested that the Court abstain from publicly releasing

151. *Id.* ¶ 312.

152. *Id.* ¶ 315.

153. *Id.* ¶ 316.

154. *Id.* ¶ 326.

155. *Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment*, Order of the Court, Inter-Am. Ct. H.R., "Considerando" ¶ 5 (Nov. 26, 2008) (Available only in Spanish).

156. *Id.* "Considerando" ¶ 10.

157. *Id.* "Considerando" ¶¶ 8, 10.

158. *Id.* "Considerando" ¶¶ 13, 16.

materials related to its investigation.¹⁵⁹ Furthermore, the MOS created media releases and communication channels to encourage victims to come forward and initiated efforts to locate bodies of missing victims.¹⁶⁰

As to the State's obligation to provide treatment to the victims and their next of kin, the State expressed its inability to comply because the representatives failed to provide it with necessary information regarding the beneficiaries.¹⁶¹ The Court requested additional information describing the State's difficulties in providing treatment and measures taken to overcome these difficulties.¹⁶²

Next, with regard to the State's obligation to ensure the safety of those victims that wish to return to the Mapiripán region, although the State created procedures for this to occur, there was a lack of response from the victims.¹⁶³ Due to safety concerns, the victims instead wished to be relocated to another region.¹⁶⁴ The Court requested that the State continue to update it on the safety measures implemented and the victims' wishes.¹⁶⁵

Although the deadline passed for the erection of monument commemorating the victims, the Court granted an extension because the State and the representatives agreed that the creation of such a monument should involve the input of the victims and their next of kin.¹⁶⁶ To date, only thirteen victims had been identified, making it inappropriate to erect the monument before more victims could participate.¹⁶⁷

The State had not taken any measures to educate its army on human rights and accordingly, the Court requested compliance and documentation.¹⁶⁸

The Court deemed that the State complied with its order to publish the relevant portions of the judgment in the national newspaper and another publication with widespread circulation when it published said portions in Colombia's "*Diario Oficial*" and in "*El Tiempo*" on April 10, 2006.¹⁶⁹

Finally, the Court recognized that the State compensated the

159. *Id.* "Considerando" ¶ 11.

160. *Id.* "Considerando" ¶ 14.

161. *Id.* "Considerando" ¶ 17.

162. *Id.* "Considerando" ¶ 20.

163. *Id.* "Considerando" ¶ 21.

164. *Id.* "Considerando" ¶ 22.

165. *Id.* "Considerando" ¶ 23.

166. *Id.* "Considerando" ¶ 26.

167. *Id.* "Considerando" ¶ 24.

168. *Id.* "Considerando" ¶¶ 27, 29.

169. *Id.* "Considerando" ¶¶ 30-31.

named victims and one unidentified victim, but that additional compensation payments would be required as the other unidentified victims became known.¹⁷⁰ Because the Court could not determine the status of the State's compliance with the provisional measures, it ordered a public hearing to be held on January 20, 2009.¹⁷¹

July 8, 2009: With respect to two individuals who the State contended were not victims, the Court found that the characteristics of the massacre place the burden on the State to "irrefutably prove" that the individual was not a victim.¹⁷² Consequently, these two individuals were to be paid reparations.¹⁷³

With respect to the domestic monitoring system for the identification and compensation of victims, the Court noted there were positive steps made to the establishment of said system.¹⁷⁴ As this issue was ongoing however, the Court resolved to continue monitoring the implementation of the system.¹⁷⁵

With respect to the domestic criminal prosecution, the Court noted, as some prosecutions were ongoing, that the State requested that the monitoring not interfere with the criminal proceedings.¹⁷⁶ While progress was being made, the Court decided to continue monitoring these proceedings.¹⁷⁷ Furthermore, some paramilitary members were extradited to other countries (including the United States) for various other crimes.¹⁷⁸ The Court required that none of these other proceedings interfere with the rights of the victims recognized in the Judgment on the Merits.¹⁷⁹

With respect to the identification of the victims, the State made positive progress designing and publishing announcements for the identification of the victims.¹⁸⁰ However, the posthumous exhumation of the victims yielded little results towards DNA identification.¹⁸¹ Accordingly, the Court continued monitoring this issue.¹⁸²

170. *Id.* "Considerando" ¶¶ 32, 36.

171. *Id.* "Considerando" ¶ 40, "Resuelve" ¶ 1.

172. *Id.* "Considering" ¶ 13.

173. *Id.*

174. *Id.* "Considering" ¶ 18.

175. *Id.*

176. *Id.* "Considering" ¶ 26.

177. *Id.* "Considering" ¶¶ 26, 31.

178. *Id.* "Considering" ¶ 37.

179. *Id.* "Considering" ¶ 41.

180. *Id.* "Considering" ¶ 49.

181. *Id.*

182. *Id.*

The Court also noted that the psychological assistance for victims had not yet been implemented.¹⁸³ Accordingly, the Court continued monitoring in this respect.¹⁸⁴

With respect to ensuring safe conditions should the victims decide to return, the Court noted it lacked information from the State to ensure compliance.¹⁸⁵ The Court also lacked information as to the implementation of human rights education for the armed forces.¹⁸⁶ Accordingly, the Court continued monitoring these issues.¹⁸⁷

As to the erection of a monument, the Court noted the victims and the State were working positively towards an appropriate resolution.¹⁸⁸ Accordingly, the Court continued monitoring this issue.¹⁸⁹

The Court also found the State had fully complied with its obligation to publish the Court's decision on the merits.¹⁹⁰

Finally, with respect to the payment of damages, the Court found the State fully compensated all identified victims, and would continue to monitor the payment of newly identified victims into the future.¹⁹¹

February 8, 2012: After a disagreement arose between the representatives and the State, the Court deemed it necessary to hold a private hearing on February 23, 2012 on the implementation of the medical and psychological assistance for victims of the massacre.¹⁹²

November 23, 2012: The State presented proof that six of the victims named in the Court's judgment were not actually victims of the massacre.¹⁹³ The Court accepted this proof and declared that the State need not make reparations to these individuals and their families.¹⁹⁴ The Court ordered that the State continue to implement with the other reparations contained in the Judgment and that it submit a compliance report no lat-

183. *Id.* "Considering" ¶ 54.

184. *Id.*

185. *Id.* "Considering" ¶ 58.

186. *Id.* "Considering" ¶ 63.

187. *Id.* "Considering" ¶¶ 58, 63.

188. *Id.* "Considering" ¶ 60.

189. *Id.*

190. *Id.* "Considering" ¶ 66.

191. *Id.* "Considering" ¶¶ 75-76.

192. Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 14, "Decides" ¶ 1 (Feb. 08, 2012).

193. Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considerando Que" ¶ 23 (Nov. 23, 2012) (Available only in Spanish).

194. *Id.*

er than February 22, 2013.¹⁹⁵

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Mapiripán Massacre v. Colombia, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 134 \(Mar. 7, 2005\).](#)

2. Decisions on Merits, Reparations and Costs

[Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 134 \(Sept. 15, 2005\).](#)

[Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 192 \(Sept. 15, 2005\).](#)

[Mapiripán Massacre v. Colombia, Merits, Reparations and Costs, Separate Opinion of Judge Ad Hoc Gustavo Zafara Roldán, Inter-Am. Ct. H.R. \(ser. C\) No. 192 \(Sept. 15, 2005\).](#)

3. Provisional Measures

[Mapiripán Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 01, 2011\).](#)

[Mapiripán Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 02, 2010\).](#)

[Mapiripán Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 03, 2008\).](#)

[Mapiripán Massacre v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 27, 2005\) \(Available only in Spanish\).](#)

195. *Id.* “Considerando Que” ¶ 24.

4. Compliance Monitoring

[Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 23, 2012\) \(Available only in Spanish\).](#)

[Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Feb. 08, 2012\).](#)

[Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jul. 08, 2009\).](#)

[Mapiripán Massacre v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Nov. 26, 2008\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

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T. Rincón, *The Judicial Protection of Internally Displaced Persons in Colombia: National and Inter-American Perspectives*, BROOKINGS (Feb. 21, 2015, 2:00 PM), http://www.brookings.edu/~media/research/files/papers/2009/11/judicial%20protection%20arango/chapter_5.pdf.

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