

COLOMBIA:

THE ICTJ BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

In May 2005, the International Center for Transitional Justice (ICTJ) submitted an *amicus* brief in the *case of the Mapiripán Massacre* vs. Colombia before the Inter-American Court of Human Rights (hereinafter the “Inter-American Court”). The ICTJ’s brief stresses the importance of a comprehensive examination of the failure to investigate the 1997 massacre of approximately 49 civilians. The brief offers a detailed analysis of the Inter-American case law on the issue, examines several situations in the Mapiripán facts that entail *de facto* impunity, and suggests that the Court should consider the possible influence of demobilization laws and practices on impunity.

The Mapiripán Massacre

According to the petitioners, between July 15th and July 20th, 1997, more than one hundred members of the paramilitary group known as the *Autodefensas Unidas de Colombia* (United Self-Defense Groups of Colombia, hereinafter “the AUC”) in collaboration, by deed or omission, with members of the Colombian National Army, invaded the Southwestern town of Mapiripán in the province of Meta. For five days, they massacred and mutilated the bodies of about 49 civilians. The dismembered bodies, some still alive, were then thrown into the Guaviare River.

After the massacre, several arrest warrants were issued for a number of persons under investigation, including known leaders of the AUC and members of the Army, some of whom were prosecuted. There are arrest warrants, however, that have still not been served, despite the fact that they are issued against persons who are in frequent contact with the press and in some cases, publicly in contact with government officials. Fourteen AUC members were eventually convicted. Among them, Carlos Castaño has disappeared and is now generally presumed dead. The other thirteen were never detained, and the investigation did not move forward. The investigation of the rest of the

approximately one hundred members of the AUC that took part in carrying out the massacre remains open. In addition, the case against the senior military officers allegedly involved in the massacre was transferred to the military courts.

The International Claim

On October 6th, 1999, the *Colectivo de Abogados “José Alvear Restrepo”* and the Center for Justice and International Law (CEJIL) lodged a petition against Colombia with the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission”). The petitioners claimed that members of the Colombian National Army participated both actively and passively, in coordination with the AUC, in planning and carrying out the massacre, therefore making the State responsible for the violation of the rights to life, personal liberty, fair trial, freedom of conscience, and judicial protection as declared in Articles 4, 5, 7, 8(1), and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), as well as for failing to ensure respect for the rights recognized in that Convention (Art. 1(1)).

On February 22nd, 2001 the IACHR declared the case admissible (Report no. 33/01, case 12.250); and on March 4th, 2003 the IACHR adopted its final Report no. 38/03 (Article 50).

After evaluating the State’s response, the Inter-American Commission decided to refer the case to the Inter-American Court. The Inter-American Commission declared the State to be in violation of Articles 4, 5, 7, 8(1), and 25 of the American Convention and to have failed in its obligation to ensure respect for the rights recognized in that Convention. The Inter-American Commission asked the Inter-American Court to order the Colombian Government to fully investigate the facts through its civilian criminal jurisdiction, which would finally enable the prosecution and eventual punishment of the perpetrators. The Inter-American Commission also demanded compensation for the victims.

The *Colectivo de Abogados* and CEJIL, representing the victims, also filed a petition arguing that Colombian demobilization policy intentionally obstructed the

investigations. In particular, they claimed that many perpetrators, who have yet to be identified, may have been included in the peace agreement signed between Colombia and the *Bloque Cacique Nutibara* in November of 2003. According to the petitioners, the signing of the peace agreement itself was made possible because Colombian demobilization laws allow the impunity of paramilitary groups (Laws 418 –1997-, 548-1999- and 782 –2002, and corresponding decree 128 –2003). Finally, they criticized the draft of a proposed demobilization law that was presented in late 2003 to the Colombian Congress. They asked the Inter-American Court not only to declare Colombia responsible for the massacre, but also to establish a clear standard on international human rights limits to demobilization policies and to order the State to adjust its domestic law accordingly.

The ICTJ arguments

The ICTJ submitted its *amicus curiae* brief to the Inter-American Court on May 15th, 2005, stressing the importance of an examination of the absence of an effective investigation of the *Mapiripán Massacre*. In this brief, the ICTJ offers a detailed analysis of the Inter-American case law on the issue, examines several situations that entail *de facto* impunity, and suggests that the Inter-American Court should consider the possible influence of demobilization laws and practices on impunity.

The ICTJ's brief summarizes the Inter-American Court's rulings on the State's obligation to prosecute and punish perpetrators of human rights violations. The document outlines the general characteristics of these duties as described by the Inter-American Court in its initial decision in the *Velásquez Rodríguez* case (July 29th, 1988, Serie C, No. 4), noting that all these principles have recently been reaffirmed in the Colombian case of the *19 Merchants* (July 5, 2004; Series C, No. 109). Similarly to the *19 Merchants* case, paramilitary groups in the *Mapiripán* case also acted without any State opposition. The ICTJ underscores the importance of the inherent relationship between the victims' right to truth and the urgency of an adequate judicial investigation of human rights violations.

The ICTJ's brief argues that impunity is brought about not only by the lack of a diligent investigation, but also, as the Inter-American Court has frequently ruled, by the

absence of any process of arrest, prosecution, indictment, sentencing, and conviction of perpetrators of any violation of the rights of the American Convention. Furthermore, the brief goes on to state that impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.

A State can establish limits for criminal responsibility, but any obstruction to the investigation and prosecution of gross human rights violators must be thoroughly examined according to the American Convention. A State cannot appeal to its domestic law to ignore its international obligations and, more specifically, cannot deny individuals their access to justice.

The ICTJ claims that not only domestic law, but often domestic practices constitute major impediments to justice and lead to *de facto* impunity. The Center lists several key aspects of a thorough investigation and relates them to the Inter-American case-law in the context of the *Mapiripán* case. The brief argues that it is unacceptable, for example, that not even basic investigative requirements, such as the proper identification of victims' remains, have been carried out. The ICTJ also highlights other examples of procedural flaws in the investigation process, such as the failure to inspect the crime scene immediately after the massacre.

In addition, the ICTJ points out that the demobilization process itself may lead to further problems, undermining the possibility of an adequate investigation of the massacre. After summarizing the fundamental aspects of the current legislative scheme (which—in theory—only governs demobilizations where the individual is not involved in serious human rights abuses), the ICTJ says that such instruments can foster the necessary conditions for democratic dialogue in Colombia; however, the ICTJ notes that this objective can only be reached as long as the implementation of the governmental plan respects the State obligations according to American Convention.

The ICTJ also identifies specific facts regarding the demobilization practices that should be taken into consideration by the Inter-American Court. Among these the ICTJ underlined the failure to adequately identify the beneficiaries of the demobilization plan, and the administrative suspension of the judicial arrest warrants against paramilitary leaders involved in the peace negotiations.

Finally, the ICTJ lists seven human rights principles established by the Inter-American Court that should be reviewed for an adequate study of the impacts of the demobilization process on the investigations in the Mapiripán case. The Center draws the Inter-American Court's attention to the fact that the less the State's practices adhere to these principles, the more likely it is that the demobilization process has been affecting the investigations.

The principles that the Inter-American Court has established as core requirements for a State response to human rights violations are as follows: *i)* identification of victims; *ii)* identification of perpetrators; *iii)* victims' participation in the investigations; *iv)* domestic publicity of the procedures, *v)* judicial control of the right to truth; *vi)* judicial independence, and *vii)* international accountability for State's policies limiting and restricting fundamental rights.

Because the Inter-American Court has consistently adopted these basic principles since the *Velásquez Rodríguez* case the ICTJ stated that the failures to follow them the demobilization process itself might be in violation of the duty to investigate.

Next steps

The Inter-American Court of Human Rights has already concluded hearings in the *Mapiripán* case; the Court's ruling has yet to be issued. The ICTJ hopes that its *amicus* brief will prove useful to the Court as it grapples with the question of *de facto impunity* in this important case.

The ICTJ, June 27th, 2005

The full text of the *amicus* brief is available in Spanish