INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE SANTO DOMINGO MASSACRE *v.* COLOMBIA

JUDGMENT OF NOVEMBER 30, 2012
(Preliminary objections, merits and reparations)

In the *case of the Santo Domingo Massacre*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge, and

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and with Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court[1] (hereinafter "the Rules of Procedure"), delivers this Judgment, structured as follows:

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[1] The Court's Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

CASE OF THE SANTO DOMINGO MASSACRE *V.* COLOMBIA

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. In a brief of July 8, 2011 (hereinafter "submission brief"), the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court's jurisdiction, in accordance with Articles 51 and 61 of the Convention, case 12,416 against the Republic of Colombia (hereinafter also "the State" or "Colombia").

2. In general, the proceedings before the Commission occurred as follows: the initial petition was lodged before the Commission on April 18, 2002, by the following organizations: the *Comisión Interfranciscana de Justicia, Paz y Reverencia con la Creación,* the "Joel Sierra" Regional Human Rights Committee, the "José Alvear Restrepo" Lawyers' Group, the *Humanidad Vigente Corporación Jurídica*, and the Center for International Human Rights of the Northwestern University School of Law (hereinafter "the petitioners"). On March 6, 2003, the Commission approved Admissibility Report No. 25/03.[2] On March 24, 2011, the Commission approved Report on Merits No. 61/11 (hereinafter "Merits Report") under Article 50 of the Convention, in which it concluded that the State was responsible for various violations of the Convention and made certain recommendations to the State.[3] This report was notified to the State on April 8, 2011, and it was granted two months to report on compliance with the recommendations. In a communication of June 7, 2011, the State requested an extension to present information in this regard, and this was granted until June 30, 2011. In view of the State's failure to present information, the Commission decided to submit the case to the Court, for "all the facts and human rights violations described in Merits Report 61/11." The Commission appointed Commissioner María Silvia Guillén and the Commission's Executive Secretary at the time, Santiago A. Cantón, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and María José Veramendi, lawyers of the Executive Secretariat, as legal advisers.

3. According to the Commission, the case refers to an alleged bombardment perpetrated by the Colombian Air Force on the village of Santo Domingo, municipality of Tame, department of Arauca, on December 13, 1998. In its Merits Report, the Commission considered that, on December 13, 1998, at 10.02 a.m., the crew of a helicopter of the Colombian Air Force (FAC) launched a cluster device, composed of six fragmentation bombs, on the urban area of the village of Santo Domingo, resulting in the death of 17 civilians, including four boys and two girls, and 27 injured civilians, including five girls and four boys. The Commission noted that the members of the Armed Forces who formed the crew of the aircraft were aware that these persons were civilians. In addition, it considered probable that, following the explosion, the survivors and injured were machine-gunned from a helicopter when they tried to assist the injured and to flee the village. It

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[2] In this report, the Commission concluded that the petition was admissible, under the requirements established in en Articles 46 and 47 of the American Convention, based on the presumed violation of the right to life, personal integrity, judicial guarantees, property, rights of the child, and judicial protection established in Articles 4, 5, 8, 19, 21 and 25 of the American Convention, in relation to Articles 1 (1) and 2 of this instrument. IACHR Report 25/03, petition 289-02, Admissibility, Santo Domingo, Colombia, March 6, 2003.

[3] In its Merits Report, the Commission made the following recommendations to the State: (1) conduct an impartial and thorough investigation within a reasonable time in order to prosecute and punish all those who carried out and masterminded the human rights violations found in the instant report; (2) investigate the link between State agents and the extractive company that operates in the area where the facts occurred and adopt the adequate measures to prevent that the facts described in this report happen again; (3) establish, with the participation of the community in its design and implementation, a collective reparation mechanism that recognizes the impact that the bombardment had on the civilian population of the village of Santo Domingo to remedy the grave and durable consequences for the community as a whole and that takes into consideration development initiatives on health, housing and education; (4) adopt such measures as may be necessary to prevent a repetition of patterns of violence against the civilian population in keeping with the duty to protect and ensure the fundamental rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law in the armed forces training schools; (5) provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects, including elucidation and circulation of the truth of the events, remembrance of the deceased victims, and implementation of an adequate program of psychosocial care for surviving family members, and (6) provide reparation to the children affected by the bombardment of the village of Santo Domingo through measures in which the best interest of the child prevails, the respect for their dignity, the right of children to participate, as well as the respect for their opinions in the process of design and implementation of the reparatory measures. *Cf.* Merits Report No. 61/11, Merits, Tome I, folio 44. Available at: http://www.cidh.oas.org/demandas/12.416ESP.pdf

considered that the foregoing resulted in the displacement of the population of Santo Domingo, after which the empty homes were sacked or pillaged. Furthermore, the case refers to the alleged lack of judicial protection and failure to observe judicial guarantees.

4. Based on the above, the Commission asked the Court to declare that the State was internationally responsible for the violation of the following rights, in relation to Article 1(1) of the Convention:

a) The right to life, contained in Article 4(1) of the American Convention, to the detriment of Levis Hernando Martínez Carreño, Teresa Mojica Hernández de Galvis, Edilma Leal Pacheco, Salomón Neite, María Yolanda Rangel, Pablo Suárez Daza, Carmen Antonio Díaz Cobo, Nancy Ávila Castillo (or Abaunza), Arnulfo Arciniegas Velandia (or Calvo), Luis Enrique Parada Ropero and Rodolfo Carrillo;

b) The right to life, in relation also to Article 19 of the Convention, to the detriment of the boys Jaime Castro Bello, Luis Carlos Neite Méndez, Oscar Esneider Vanegas Tulibila and Geovani Hernández Becerra, and the girls Egna Margarita Bello and Katherine (or Catherine) Cárdenas Tilano;

c) The rights to life and to personal integrity contained in Articles 4(1) and 5(1) of the American Convention, to the detriment of Alba Yaneth García, Fernando Vanegas, Milciades Bonilla Ostos, Ludwing Vanegas, Xiomara Garcfa Guevara, Mario Galvis, Fredy Monoga Villamizar (or Fredy Villamizar Monoga), Mónica Bello Tilano, Maribel Daza, Amalio Neite González, Marian Arévalo, José Agudelo Tamayo, María Panqueva, Pedro Uriel Duarte Lagos, Ludo Vanegas, Adela Carrillo, Alcides Bonilla and Fredy Mora;

d) The rights to life and to personal integrity, to the detriment of the boys Marcos Neite (5), Erinson Olimpo Cárdenas (9) and Ricardo Ramírez (11), and the girls Hilda Yuraime Barranco (14), Lida Barranca (8), Yeimi Viviana Contreras (17), Maryori Agudelo Flórez (17), Rosmira Daza Rojas (17) and Neftalí Neite (17);

e) The right to property established in Article 21(1) and 21(2) of the Convention, to the detriment of the victims who were stripped of their possessions, as well as of the survivors who lived in the village of Santo Domingo and whose homes and belongings were destroyed or looted;

f) The right to freedom of movement and residence established in Article 22(1) of the Convention, to the detriment of the persons who were displaced from the village of Santo Domingo;[4]

g) The rights to judicial guarantees and judicial protection, established in Articles 8(1) and 25 of the American Convention, to the detriment of the victims who were injured and the next of kin of the victims indicated in annex 1 to the Report, and

h) The right to personal integrity, to the detriment of the next of kin of the victims indicated in annex 1 of the Merits Report.

5. For their part, in general, the representatives of the presumed victims (hereinafter "the representatives") concurred with the facts indicated by the Commission. They alleged that the events took place within the framework of a counterinsurgency operation known as "*Relámpago II,*" conducted by the 18th Brigade of the National Army, with air support from the Colombian Air Force and United States personnel at the service of a foreign company, associated with security and surveillance work for a multinational company that exploited an oilfield in the area, and with resources provided by another company, under a contractual relationship with State institutions. They alleged that the acts of sacking and looting of the homes occurred while the territory was under the control of the Colombian National Army. In addition, the representatives alleged that measures were taken to divert responsibility for the bombing from the military forces and their senior commanders by the National Army and by the Colombian Air Force, by disseminating a version according to which members of the "Colombian Revolutionary Armed Forces (hereinafter also "FARC") guerrilla had used the civilian population as a human shield and had allegedly placed a car bomb that had caused the deaths. The representatives agreed, in general, and according to their own assessments, with the violations alleged by the Commission and indicated that the State had also violated to right to honor and dignity and the obligation to adopt domestic legal provisions, contained in Articles 11 and 2 of the Convention, respectively, to the detriment of the victims and their next of kin. Consequently, they asked the Court to order the State to make diverse measures of reparation, and to pay costs and expenses.

[4] The Commission stated, with regard to the identification of the presumed victims of the alleged violations of the rights to freedom of movement and residence, and to property, that "owing to the nature of the facts of the case, the Commission could not obtain precise information that would allow it to individualize all the victims of these violations." Letter of July 8, 2011, submitting case No. 12,416 (merits file, tome 1, folio 4).

6. The State asserted that the Commission's affirmations were not in keeping with the reality. In particular, it indicated that, to counter the FARC's unlawful activities, a military operation was planned and executed as of December 12, 1998; that, when a situation of tactical disadvantage and risk for the safety of the soldiers arose, on the morning of the following day an aerial attack with an AN-MIA2 device was planned and ordered in the place where the guerilla were concentrated in an area with dense vegetation known as "*mata de monte*" [woodland bushes] which is more than 500 meters from the village of Santo Domingo. In other words, it alleged that the Colombian Air Force did not launch any bomb in the urban center of Santo Domingo and that the deaths that occurred were caused by a bomb installed by the FARC guerrilla in a truck in the main street of the village, acts and damage that cannot be attributed to the State, which complied fully with its obligations to protect the civilian population. In addition, it argued that the looting was carried out by members of the FARC who remained in the village after December 13, 1998. It argued that it had not violated the right to the truth by not investigating the masterminds, because a final criminal judgment exists in which a member of the FARC has been convicted of the facts. The State also proposed an "acknowledgment of responsibility" for the violation of the right to judicial guarantees and to judicial protection of the victims and their next of kin, because, owing to flaws in the evidence that was presented during the criminal proceedings in first and second instance against the pilots of the [Colombian Air Force] aircraft, […] the right of the victims to accede to the truth and an investigation with the guarantees [contained] in Colombian law was violated."

II
PROCEEDINGS BEFORE THE COURT

7. The submission of the case by the Commission was notified to the State and to the representatives on September 19, 2011.

8. On November 21, 2011, the representatives[5] presented their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), in keeping with Articles 25 and 40 of the Rules of Procedure.

9. On March 9, 2012, the State submitted to the Court its brief filing preliminary objections,[6] answering the submission of the case and with observations on the pleadings and motions (hereinafter "answer" or "answering brief"). Initially, the State appointed Eduardo Montealegre Lynnet as Agent and Rafael Prieto Sanjuán as Deputy Agent[7] and, subsequently, as of June 15, 2012, it appointed Rafael Nieto Loaiza and Luz Marina Gil as Agents for this case.

10. On May 22 and 23, 2012, the representatives and the Commission, respectively, presented their observations on the preliminary objections and the text that the State referred to as "partial acknowledgement of responsibility."

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[5] In a communication of September 10, 2011, in response to a request for clarification sent by the Secretariat on the instructions of the President, the "José Alvear Restrepo" Lawyers' Group*; Humanidad Vigente Corporación Jurídica;* the "Joel Sierra" Human Rights Foundation*,* the *Asociación para la Promoción Social Alternativa (Minga)* and the lawyers Douglass Cassel, David Stahl and Lisa Meyer stated that they represented the presumed victims. They indicated that, on July 3, 2011, they had provided the Inter-American Commission with 90 powers of attorney, of which 11 corresponded to "persons injured in the bombardment" and 79 to next of kin of the presumed victims, "taking into account that the survivors were victims of forced displacement and, in some cases, it has not been possible to locate their current place of residence." In addition, at that time, they provided four additional powers of attorney of next of kin (merits file, tome 1, folio 81).

[6] The preliminary objections filed by the State are "lack of competence" of the Court *ratione materiae* and "failure to exhaust domestic remedies" with regard to some of the presumed victims.

[7] On March 6, 2012 the State advised that Eduardo Montealegre Lynnet would act as its sole Agent. On March 28, 2012, the State advised that Mr. Montealegre Lynnet was unable to continue acting as Agent in this case, because he would be assuming the post of Prosecutor General; it therefore appointed Luz Marina Gil and Jorge Alberto Giraldo Rivera as agents.

11. On June 5, 2012, the President issued an Order[8], in which he required that the statements of 18 presumed victims, one witness and four expert witnesses proposed by the representatives be received by affidavit; declared inadmissible the expert evidence offered by the State, and required the latter to present certain documentation in keeping with Article 58 of the Rules of Procedure. In addition, in this Order the President convened the parties and the Commission to a public hearing.

12. On June 7, 2012, the State partially appealed the preceding Order with regard to the inadmissibility of the expert evidence offered. After receiving the observations of the representatives and the Commission, the Court issued an Order on June 18, 2012,[9] in which it rejected the appeal filed by the State and ratified all aspects of the President's Order.

13. The public hearing was held on June 27 and 28, 2012, during the Court's ninety-fifth regular session.[10] During the hearing, the statements of two presumed victims offered by the representatives, one witness offered by the State, and one expert witness offered by the Commission and the representatives were received.

14. Furthermore, the Court received an *amicus curiae* brief from the organization "*Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO*)."

15. On June 27, 2012, the State and the representatives presented their final briefs and the Commission presented its final written observations. Since the State and the representatives presented documents attached to the said briefs, on August 17, 2012, a time frame was granted for the presentation of observations, with the clarification that this did not represent a new procedural opportunity to expand arguments, so that the admissibility of the documentation presented by the parties that had not been requested by the Court or its President, as well as any arguments in this regard, would be decided by the Court at the appropriate opportunity. On August 31, 2012, the representatives and the Commission presented their observations.

III
PRELIMINARY OBJECTIONS

A. First preliminary objection: "Lack of competence *ratione materiae*"

A.1. Arguments of the Commission and allegations of the parties

16. The State asked the Court to admit the preliminary objection in relation to the alleged violations of the rights to life, personal integrity, property, and freedom of movement and residence, because these were matters relating to the presumed violation of norms of international humanitarian law. The State underlined that the States Parties to the Convention are subject to the jurisdiction of the Court, whose competence is limited, and only events associated with presumed violations of its norms are subject to international proceedings. Even though other normative may be referred to and other judicial decisions incorporated, these only constitute criteria to assist the interpretation.[11] The State indicated that both the general context and the specific context of the

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[8] *Cf. Case of the Santo Domingo Massacre v. Colombia*, Order of the President of the Court of June 5, 2012, available at http://www.corteidh.or.cr/docs/asuntos/santodomingo_05_06_12.pdf.

[9] *Cf. Case of the Santo Domingo Massacre v. Colombia*, Order of the Inter-American Court of June 18, 2012, available at http://www.corteidh.or.cr/docs/asuntos/santodomingo_18_06_12.pdf.

[10] There appeared at this hearing: (a) for the Inter-American Commission: Felipe González, Commissioner, Silvia Serrano Guzmán, Adviser, and Álvaro Botero, Adviser; (b) for the representatives: Rafael Barrios Mendivil, Nicolás Escandón Henao and Jomary Ortegón Osorio, CCAJAR; Tito Augusto Gaitán Crespo and Andrea Lucía Rodríguez Orama, the *Asociación Minga*; Janet Eliana Zamora González, HVCJ; Alonso Campiño Bedoya and Yilson Javier Torres Rodríguez, the "Joel Sierra" Foundation, and Douglas Cassel and David Stahl, lawyers, and (c) for the State: Rafael Nieto Loaiza and Luz Marina Gil García, Agents; Hernando Herrera Vergara, Ambassador of Colombia to Costa Rica; Assad José Jater Peña, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, and Jorge Giraldo Rivera, Coordinator, Inter-institutional Operations Group.

[11] In this regard, the State argued that the only source of law admitted by the Convention as an element for determining international responsibility is the American Convention, which constitutes the universe under the jurisdiction of the Court. The State added that hearing and analyzing responsibility based on other norms disregards the principle of

facts that are in dispute correspond to a typical situation of armed conflict, because the Colombian Army was fighting the FARC guerrilla about 500 meters from the village of Santo Domingo. Consequently, the State argued that the eventual violations and responsibilities that could be derived from them could not be determined by the Court, because the latter does not have competence to make the type of declarations that relate to the application of international humanitarian law, because "war law" does not fall within its competences.[12]

17. Furthermore, the State asked that two issues described by the Commission in the brief submitting the case be excluded from the considerations of the Court: namely, the attribution of State responsibility for acts of private individuals in coordination with the Armed Forces, and the obligation to investigate human rights violations for which senior commanders were responsible. In this regard, it cited Article 35(1)(f) of the Court's Rules of Procedure. On this point, the State argued that when the Commission raises an issue and indicates that it relates to inter-American public order, it is required to substantiate and provide grounds for this, not as a simple human rights violation in the specific case, but from the perspective of special international legal frameworks for the protection of human rights.

18. Subsidiarily, the State asked the Court that, should it not admit the preliminary objection filed, it admit it partially, so that, in its judgment on merits, it could not make any rulings or condemnation in relation to the presumed violation of articles of international humanitarian law, and that its decision would be made exclusively in relation to the presumed violation of the articles of the Convention.

19. The Commission alleged that the State's argument based on the context of armed conflict as determining the competence of the organs of the inter-American system to hear a case was inconsistent with the provisions of the American Convention – which does not establish limitations to the competence of the Commission and of the Court to hear cases only in "situations of peace" and, to the contrary, covers emergency situations in its Article 27 – and with the consistent practice of the Court in the exercise of its contentious competence. Regarding the subsidiary claim of the State, the Commission underscored that, in its Merits Report, it had not established any violation of norms of international humanitarian law or the State's international responsibility in relation to the Geneva Conventions. Thus, it observed that the exercise carried out by the Commission in the said report consisted in establishing the violations of the American Convention and declaring the State's international responsibility for such violations, taking into account, to the extent pertinent according to the nature of the said violations, some principles of international humanitarian law that were useful and provided guidance to establish the scope of the State's

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material competence and is inadmissible because, among other reasons, it ignores the restriction established by the Convention. Supranational organizations and regulations are created based on State sovereignty and, likewise, it is based on the principle of consent that the subjects of international law establish juridical prescriptions and determine the competences of the organs that interpret and apply them. Thus, it is inadmissible that international organs require more of the States than the latter have accepted. Furthermore, if it hears the facts of the instant case, the Inter-American Court will not be using the norms of international humanitarian law as interpretation criteria, but will almost be deciding questions related to its violation by indirect means. In this way, it will be disregarding the principles of the acceptance and transfer of competence that the Colombian State has granted to the Court and the Commission. In addition, it will be assuming competences that correspond to Colombia's domestic courts, regarding which Colombia has not made a transfer to the Court. Cf. Answering brief (merits file, tome 2, folios 351 to 362).

[12] It argued that human rights law should be interpreted in light of the principles of humanitarian law, owing to the implications of the state of emergency on the constitution and scope of some basic guarantees; however, in the hypothesis of an armed conflict, international humanitarian law becomes *lex specialis.* "In brief, even though the two are parallel and concurrent protection mechanisms, based on its specialization in the matter, international humanitarian law is composed of principles and mechanisms that are much more appropriate in the hypothesis of armed conflict than the mandates of international human rights law. Thus, the death of or injury to a person may relate to humanitarian law or be considered a violation of the right to life. The way in which the sphere of competence is decided in relation to a fact is determined precisely by the context. If the death occurred in an armed conflict, then the case should be analyzed in light of international humanitarian law. To the contrary, human rights law will apply. However, considering that the death of a person in the context of an armed conflict affects articles of human rights law leads to an overlapping of competences" (merits file, tome 2, folios 355 and 356).

obligations when analyzing operations carried out by the armed forces in contexts of armed conflict.[13] Consequently, it considered that the State's claims were inadmissible.

20. The representatives argued that the objections filed by the State should be rejected because they constituted arguments on merits aimed at denying the State's international responsibility in relation to facts that it inappropriately presented as supervening (*infra* para. 148). Regarding the first objection, they added to the observations made by the Commission "that studying, analyzing and interpreting the normative framework of international humanitarian law as a complement to international human rights law is an effective formula to decide this case, which undoubtedly represents and develops aspects that need to be dealt with as part of inter-American public order."

A.2. Considerations of the Court

21. Regarding the first preliminary objection filed by the State, the Court reiterates that the American Convention is an international treaty under which the States Parties undertake to respect the rights and freedoms recognized therein and to ensure the exercise of such rights and freedoms to all persons subject to their jurisdiction, and that the Court is competent to decide whether any State act or omission, in times of peace or armed conflict is compatible with the American Convention. In addition, the Court indicated that, in this activity, the Court has no normative limit and that any legal norm may be submitted to this examination of compatibility.[14]

22. In addition, the Court recalls that several judgments delivered in the context of its contentious competence refer to acts that occurred during non-international armed conflicts.[15] The American Convention does not establish limitations to the Court's competence to hear cases in situations of armed conflict.[16]

23. Similarly, with regard to the application of international humanitarian law, the Court has indicated on other occasions that although "the Court lacks competence to declare that a State is internationally responsible for the violation of international treaties that do not attribute the said competence to it, it may observe that certain acts or omissions that violate human rights under the treaties that it is competent to apply also violate other international instruments that protect the individual, such as the 1949 Geneva Conventions and especially their common Article 3."[17] In addition, in the case of *Las Palmeras v. Colombia,* the Court indicated, in particular, that the relevant provisions of the Geneva Conventions could be taken into account as elements for the

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[13] Thus, the Commission underlined that the organs of the inter-American system have followed the consistent practice of taking into consideration other international instruments that have not attributed competence to them, in order to establish the scope and content of the Convention's provisions. Similarly, the Commission argued that, on several occasions, the Court has referred to principles of international humanitarian law merely in order to guide the decision of whether the State in question incurred in a violation of the American Convention. Brief with the Commission's observations.

[14] *Cf., mutatis mutandi*, *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 32.

[15] See, among others: *Case of the Plan de Sánchez Massacre v. Guatemala. Merits.* Judgment of April 29, 2004. Series C No. 105*; Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211*; Case of Las Palmeras v. Colombia. Preliminary objections; Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140*; Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006 Series C No. 148*; Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163*; Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011 Series C No. 232*; Case of the Río Negro Massacres v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of September 4, 2012 Series C No. 250, *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C. No. 252, and *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134.

[16] To the contrary, the same Article 27 of the American Convention contemplates situations in which the States may legitimately suspend the obligations undertaken under this Convention, "in time of war, public danger, or other emergency that threatens the independence or security of a State Party," provided that such measures are not inconsistent with its other obligations under international law and do not involve the rights set out in Article 27(2) of the Convention.

[17] *Case of Bámaca* Velásquez *v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 208.

interpretation of the American Convention.[18] Thus, in the case of the *Mapiripán Massacre v. Colombia*, the Court considered that:

> Although the American Convention expressly refers to the norms of general international law for its interpretation and application,[19] it is the obligations contained in Articles 1(1) and 2 of the Convention that constitute the definitive basis for the determination of a State's international responsibility for violations thereof. […] Consequently, the attribution of international responsibility to the State, as well as the scope and effects of the acknowledgement made in the instant case, must be made in light of the Convention itself.[20]

24. Based on the foregoing considerations, the Court reiterates that although the American Convention has only empowered it to determine the compatibility of the States' acts and omissions or laws with this Convention and not with the provisions of other treaties or customary norms, when making this analysis, it can, as it has in other cases (*supra* para. 22), interpret the obligation and the rights contained in the American Convention in light of other treaties. In this case, by using IHL as a supplementary norm of interpretation to the treaty-based provisions, the Court is not making a ranking between normative systems, because the applicability and relevance of IHL in situations of armed conflict is evident. This only means that the Court can observe the regulations of IHL, as the specific law in this area, in order to make a more specific application of the provisions of the Convention when defining the scope of the State's obligations.

25. In the instant case, the representatives have not asked the Court to declare the State responsible for alleged violations of norms of international humanitarian law, nor did the Inter-American Commission conclude anything similar in its report. Consequently, if necessary, the Court may refer to the provisions of the norms and principles of international humanitarian law when interpreting the obligations contained in the American Convention, with regard to the alleged violation of rights, in relation to the facts of the instant case.[21]

26. Consequently, the Court rejects the first preliminary objection filed by the State.

B. Second preliminary objection: "Failure to exhaust domestic remedies"

B.1. Arguments of the Commission and allegations of the parties

27. The State argued that the Court should not admit the case inasmuch as the requirement of previous exhaustion of the domestic jurisdiction and remedies established in Article 46(1) of the American Convention had not been complied with in the case of the presumed victims who did not have recourse to the domestic courts to obtain the declaration of the Colombian State's responsibility and reparation for the harm it had caused as a result of the events that occurred in the village of Santo Domingo.[22] The State asked the Court to reject the request for reparation of the persons who had not exhausted the domestic remedies before the Colombian contentious-administrative jurisdiction, which is appropriate for obtaining the declaration of State responsibility

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[18] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections*, paras. 32 to 34. See also, *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs,* para. 115, and *Case of Bámaca Velásquez v. Guatemala. Merits*, para. 209.

[19] Thus, the Preamble to the American Convention refers expressly to the principles reaffirmed and refined in international instruments, with "worldwide as well as regional scope" (para. 3) and Article 29 establishes the obligation to interpret it in keeping with the American Declaration "and other international acts of the same nature." Other articles refer to obligations imposed by international law in relation to the suspension of guarantees (Article 27), and also the "generally recognized principles of international law" in the definition of the exhaustion of domestic remedies (Article 46.1.a).

[20] *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs,* para. 107.

[21] In this regard, the observation in the *case of the Mapiripán Massacre v. Colombia* is applicable that "when proceeding to determine the State's international responsibility in the instant case, the Court cannot disregard the existence of the State's general and special obligations to protect the civilian population derived from international humanitarian law, in particular, Article 3 common to the Geneva Conventions of 12 August 1949 and the provisions of the Protocol Additional to the Geneva Conventions and relating to the protection of the victims of non-international armed conflicts (Protocol II)." *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*, para. 114.

[22] Likewise, the State requested the individualization of the presumed victims, because at the procedural moment when it was exercising its right to defense, it was still not know whether the persons who were alleging the violation of the provisions of the Convention had had recourse to local remedies to request the protection of their rights.

and the integral reparation of the harm caused as a result of the events that occurred in the village of Santo Domingo on December 13, 1998. It argued that the requirement of exhaustion of domestic remedies must be fulfilled by each of the victims considered individually, because the individual is the subject of the inter-American system and the object of the reparation.

28. The State alleged that the structure of internal responsibility is founded on the State's direct responsibility, which is constituted based on the function and not on the agent that gives rise to this responsibility, so that it is perfectly possible to deduce responsibility for anonymous misdemeanors and unlawful acts, for illegal conduct that can be attributed to the State, or for legal actions that result in a breach of the principle of equality in relation to public functions. It added that, for this reason, Colombian justice, on the one hand, declares the responsibility of the State directly, as a subject of rights and obligations and, on the other, establishes the obligation to make integral reparation for the harm caused. Furthermore, it indicated that it was evident that this form of responsibility is totally autonomous and independent of the responsibility of the agents, against whom independent proceedings must be filed to sanction them and to require the reimbursement of the sums of money that the State has had to assume to compensate the victims. Thus, it indicated that it corresponded to the Council of State to perform the functions of supreme contentious-administrative tribunal, a jurisdiction that is competent to hear actions for direct reparation filed by the victims who seek reparation for unlawful harm caused by the State.

29. In addition to the above, the State described the characteristics and possibilities of the contentious-administrative remedy and argued that, although "the integral reparation of the victims presumes the adoption of much more extensive measures that mere pecuniary compensation or reparation of the harm caused, […] it is also true that, according to the practice and current case law of the Colombian contentious-administrative jurisdiction, which follows the reparation standards indicated by the Inter-American Court, this domestic judicial route is suitable and effective to obtain reparation in contemporary terms [… and] to settle some of the claims made, which include compensation for the harm caused." Lastly, the State affirmed that, in the instant case, the estoppel principle is not applicable because the objection it is requesting the Court to reconsider was presented expressly and opportunely before the Inter-American Commission, and the latter dealt with it based on an inappropriate assessment. The State argued that, since a legal dispute exists between the State and the Commission, involving the basic aspect of the interpretation of the principle of subsidiarity and the State's defense, the Court must decide this.

30. The Commission considered that the matter of the exhaustion of domestic remedies was decided opportunely at the corresponding procedural stage and that, in any case, the preliminary objection was inadmissible in substance. In this regard, it argued that the analysis of whether an individual is a victim in a case of this juridical nature is different from whether or not an individual complies with the requirements of admissibility to accede to the inter-American system, In addition, it stated that the issues relating to the identification of the victims included by the State in the grounds for this objection correspond to a matter of merits. It indicated that, in its Admissibility Report, it had ruled on the application of the exceptions established in Article 46(2) of the Convention to the criminal proceedings, understood as the appropriate remedy, as well as on the action for direct reparation before the contentious-administrative jurisdiction, explaining the reasons why it was unnecessary to exhaust the said remedy in cases such as this one.

31. Regarding the argument of the suitability and effectiveness of the contentious-administrative route to repair the alleged violations in this case, the Commission argued that the action for direct reparation does not constitute a measure to clarify the truth, to obtain justice and to punish those responsible; primordial elements of reparation in cases of human rights violations. It also recalled that it has been the consistent criterion of the Inter-American Commission that, in cases of violations of the rights to life and personal integrity, the appropriate remedy to redress the situation is the investigation and criminal proceedings, which must be opened *ex officio* and conducted with due diligence.

32. For their part, the representatives added to the arguments presented by the Commission that the State, in exercise of its right to defense, had modified its position in relation to its stance before the Commission, against its own proceedings, by citing case law that establishes that the

contentious-administrative jurisdiction does not, in itself, constitute a single and sufficient remedy for the integral reparation of human rights violations. Thus, they indicated that, in its answering brief, the State had alleged that there was an additional requirement for the victims to be able to file a litigation before the Court in favor of and for the protection of their right to integral reparation, suggesting that they only have one remedy in order to accede to this right and that failure to exhaust it would be sufficient reason for the Court not to have competence to make a ruling; thus, the guarantee concerning the right claimed would be denied. The fact that some of the presumed victims have not had recourse to the contentious jurisdiction is not a sufficient argument to deny them access to justice and to their right to reparation before the Court. In brief, the State is presenting this analysis, using the mechanism established in Article 42 of the Rules of Procedure, in order to exclude 18 victims who, as indicated, have been opportunely accredited by both the Commission and the representatives.[23]

B.2. Considerations of the Court

33. Article 46(1)(a) of the American Convention establishes that, in order to determine the admissibility of a petition or communication lodged before the Inter-American Commission in accordance with Articles 44 or 45 of the Convention, the remedies under domestic law must have been pursued and exhausted, in accordance with generally recognized principles of international law.[24] The Court recalls that the rule of prior exhaustion of domestic remedies is conceived in the interest of the State, because it seeks to exempt the latter from responding before an international organ for acts that are attributed to it, before it has had the opportunity to remedy them by its own means.[25] The foregoing signifies not only that these remedies must exist formally, but also that they must be adequate and effective, as a result of the exceptions established in Article 46(2) of the Convention.[26]

34. In addition, this Court has indicated consistently that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be filed at the appropriate procedural moment;[27] in other words, during the admissibility proceedings before the Commission.[28] In this regard, when arguing the failure to exhaust domestic remedies at that time, the State must indicate the remedies that must be exhausted and their effectiveness. The Court reiterates that the interpretation that it has given to Article 46(1)(a) of the Convention for over two decades is in keeping with international law.[29]

35. The second preliminary objection filed by the State refers to the suitability of the Colombian contentious-administrative jurisdiction to be considered a remedy that, in the terms of Article 46 of the Convention, must be exhausted, in this case by 18 of the presumed victims who have not had

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[23] The representatives also argued that the presumed victims of Santo Domingo who had not used the administrative remedy suggested by the State were not exercising their right to reparation before this Court in order to enrich themselves, and especially to obtain an advantage from their condition as victims. Simply, they had resorted to the Court based on the obligations assumed by the Colombian State under the American Convention, which authorized and legitimated them to claim for the damage arising from the human rights violations committed by State agents in this case. Brief of observations on the preliminary objections of the State (merits file, tome 3, folio 876).

[24] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012 Series C No. 246, para. 23.

[25] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of González Medina and family members v. Dominican Republic*, para. 19.

[26] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*, para. 63, and *Case of Furlan and family members v. Argentina*, para. 23.

[27] *Case of Velásquez Rodríguez v. Honduras*, *Preliminary objections,* para. 88, and *Case of González Medina and family members v. Dominican Republic*, para. 21.

[28] *Cf. Case of Velásquez Rodríguez v. Honduras, Preliminary objections,* para. 88, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2011. Series C No. 228, para. 29. See also, *Case of Grande v. Argentina. Preliminary objections and merits*. Judgment of August 31, 2011. Series C No. 231, footnote 14.

[29] *Cf. Case of Reverón Trujillo v. Venezuela*. *Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 22, and *Case of Furlan and family members v. Argentina*, para. 25.

recourse to this route to request reparation. The State argued that the reparations that can be granted by this jurisdictional mechanism are in keeping with the criteria developed by this Court in relation to the integral reparation of damage. Consequently, it would be necessary to consider whether it is essential to have recourse to this domestic procedure in order to accede to the Commission and eventually to the contentious competence of the Inter-American Court.

36. In the instant case, in Admissibility Report 25/03 of March 6, 2003, the Commission ruled on the application of the exceptions established in Article 46(2) of the Convention to the criminal proceedings, understanding these as the appropriate remedy, and also to the action for direct reparation before the contentious-administrative jurisdiction, considering that it was not necessary to exhaust this remedy in cases such as this one, because it "is a mechanism intended to supervise the administrative activity of the State and merely permits obtaining compensation for damage caused by abuse of authority."[30]

37. In the *case of Cepeda Vargas v. Colombia,*[31] concerning the State's responsibility for an extrajudicial execution, the Court analyzed whether the contentious-administrative remedies had truly contributed to end impunity and to ensure the non-repetition of harmful acts, considering, in particular, that the decisions taken under this mechanism "can be relevant with regard to the obligation to make integral reparation for a violation of rights."[32] Thus, when examining the merits of that case, the Court emphasized that the contentious-administrative courts did not establish the full scope of State responsibility, even though they were supposed to do so.[33] Then, in the chapter on reparations of that case, and considering that an integral and adequate reparation cannot be reduced to the payment of compensation to the victims or their next of kin[34] (because, as appropriate, measures of rehabilitation and satisfaction, and guarantees of non-repetition are also necessary), the Court took into account the compensation awarded in the said proceedings, considering that "if national mechanisms exist to determine forms of reparation [that satisfy] criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of the rights that have been declared," such proceedings and their results "can be assessed."[35] Nevertheless, if these mechanisms do not meet the said criteria, the Court, in exercise of its subsidiary and complementary competence, must order the pertinent reparations.[36]

38. Based on the foregoing, the Court agrees with the State that the contentious-administrative proceedings may be relevant to qualify and define certain aspects or implications of the State's responsibility, as well as to settle certain claims in the context of integral reparation. Accordingly,

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[30] Admissibility Report 25-03. Available at: http://www.cidh.oas.org/annualrep/2003sp/Colombia.289.02.htm. Para. 23.

[31] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations.* Judgment of May 26, 2010. Series C No. 213, paras. 130, 131, 139 and 140.

[32] *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*, para. 214; *Case of the La Rochela Massacre v. Colombia,* para. 219; *Case of the Ituango Massacres v. Colombia*, para. 339, and *Case of the Pueblo Bello Massacre v. Colombia*, para. 206.

[33] The Court observes that, in this case, they only established administrative responsibility owing to the failure of State officials to protect the victims, and did not consider the latter's actions in the execution of this responsibility, even though the partial results of the criminal and disciplinary proceedings were available at that time; therefore, in this regard, they did not make a substantial contribution to compliance with the obligation to investigate and elucidate the facts. The Court considered that, even though it was not incumbent on the said jurisdiction to establish individual responsibilities, when determining the State's objective responsibility, the jurisdictional authorities should have taken into account all the sources of information available to them and, consequently, they should not only have verified the State's omissions, but also have determined the real scope of the State's institutional responsibility. *Case of Cepeda Vargas v. Colombia,* paras. 139 and 140.

[34] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*, para. 214; *Case of the La Rochela Massacre v. Colombia,* para. 219; *Case of the Ituango Massacres v. Colombia*, para. 339, and *Case of the Pueblo Bello Massacre v. Colombia*, para. 206.

[35] *Case of Cepeda Vargas v. Colombia,* para. 246.

[36] In the chapter on Reparations in the *case of Cepeda Vargas v. Colombia*, the Court considered that the next of kin of the victim had access to the contentious-administrative courts and that these courts determined compensation for loss of earnings (pecuniary damage) based on objective and reasonable criteria, which it found "reasonable in the terms of its case law." *Case of Cepeda Vargas v. Colombia,* para. 246.

the decisions taken at the domestic level in that jurisdiction can be taken into account when assessing the requests for reparations in a case before the inter-American system, because the victims or their next of kin must have extensive opportunities in their pursuit of fair compensation.[37] However, the contentious-administrative route will be relevant in cases in which it has been used effectively by individuals harmed by violations of their rights or by their next of kin. In other words, it is not a remedy that, of necessity, must always be exhausted, so that it does not inhibit the Court's competence to hear the instant case. Notwithstanding, the Court will take into account, as pertinent, the implications and results of this judicial mechanism in the complete and adequate determination of State responsibility, as well as with regard to establishing integral reparation in favor of the presumed victims. This analysis and assessment will be conducted taking into account the circumstances of each specific case, according to the nature of the right that is alleged to have been violated and the claims of the individual who has instituted proceedings. However, in consequence, this analysis may correspond to the merits of the matter or, if appropriate, to the reparations stage.

39. Based on the above, the Court rejects the second preliminary objection filed by the State.

IV
COMPETENCE

40. The Inter-American Court is competent to hear this case, in the terms of Article 62(3) of the Convention, because Colombia has been a State Party to the American Convention since July 31, 1973, and recognized the Court's compulsory jurisdiction on June 21, 1985.

V
EVIDENCE

41. Based on Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its case law on evidence and its assessment,[38] the Court will examine and assess the documentary probative elements forwarded by the Commission, the representatives and the State at different procedural opportunities, as well as the statements of the presumed victims and witnesses, and the expert opinions provided. To this end, the Court will abide by the principles of sound judicial discretion, within the corresponding legal framework.[39]

A. Documentary, testimonial and expert evidence

42. The Court has received documents presented by the Inter-American Commission, the representatives and the State. The Court has also received affidavits prepared by 17 presumed victims: 1) Jorge Henry Vanegas Ortiz; 2) Mario Galvis Gelves; 3) María Cenobia Panqueva; 4) Lucero Talero Sánchez; 5) Ana Miriam Duran Mora; 6) Giovanny Díaz Cobos; 7) Norelis Leal Pacheco; 8) José Rafael Hernández; 9) Deicy Damarys Cedano; 10) Nilsan Díaz Herrera; 11) Hugo Fernely Pastrana Vargas; 12) Luis Felipe Duran Mora; 13) Gladys Arciniegas Calvo; 14) Milciades Bonilla; 15) Margarita Tilano; 16) Rusmira Daza Rojas, and 17) Mónica Alicia Bello Tilano, and by four expert witnesses: 1) José Quiroga; 2) Ana Deutsch; 3) Carlos J. López Hurtado, and 4) Elizabeth Silvia Salmon Garate. The Court has also received the testimony of Dom Rizzi. Regarding the evidence provided during the public hearing, the Court received the statements of the presumed victims Alba Yaneth García and Marcos Neite González, as well as of General (rtd.) Jairo García Camargo, witness offered by the State, and expert witness Alejandro Valencia Villa, offered by the Commission. The latter also handed over a written document relating to his expert opinion on June 29, 2012.

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[37] *Cf. Case of the Ituango Massacres v. Colombia,* paras. 91 and 340.

[38] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 31.

[39] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*, para. 76, and *Case of the Massacres of El Mozote and nearby places v. El Salvador,* para. 31.

B. Admission of the documentary evidence

43. In this case, as in others, the Court admits those documents forwarded by the parties at the appropriate procedural moment that were not contested or opposed, and the authenticity of which was not challenged.[40]

44. With regard to the newspaper articles presented by the parties and the Commission with their different briefs, this Court has considered that they may be assessed when they relate to well-known public events or declarations of State officials, or when they corroborate aspects related to the case.[41] The Court decides to admit the documents that are complete or that, at least, allow their source and date of publication to be verified, and will assess them taking into account the whole body of evidence, the observations of the parties and the rules of sound judicial discretion.[42] Regarding some of the documents indicated by the parties by means of electronic links, the Court has established that, if a party provides at least the direct electronic link to the document that it cites as evidence and it is possible to access it, neither legal certainty nor procedural equality is affected, because it can be found immediately by the Court and the other parties.[43]

45. The Court observes that, in a note of the Secretariat of March 21, 2012, the State was granted the opportunity to forward some annexes to its answer to the submission that were illegible or incomplete. The representatives had also asked the State to provide some of the same documentation. On March 28, 2012, the State sent some of the requested documents and asked for an extension for the others. The additional time was granted and on April 17, 2012, the State provided the remaining documents.

46. In their brief with observations on the preliminary objections, the representatives underscored that some attachments[44] submitted by the State were not evidence. The Court considers that, indeed, several of the documents submitted by the State do not constitute probative elements; accordingly, they will not be assessed as such, but only as part of the State's arguments.

47. In an Order of the President of June 5, 2012 (*supra* para. 11), the State was asked to present a copy of certain documentation requested by the representatives.[45] The Court observes that, on June 27, 2012, the State presented only part of the requested documentation.[46]

48. Furthermore, in its answer, the State requested the Court:

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[40] *Cf. Case of Velasquez Rodriguez v. Honduras. Merits,* para. 140, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 33.

[41] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 146, and *Case of the Massacres of El Mozote and nearby places v. El Salvador,* para. 35.

[42] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* para. 146, and *Case of the Massacres of El Mozote and nearby places v. El Salvador,* para. 35.

[43] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 36.

[44] Those that referred to the actual evidence that the 12th Criminal Court of the Bogotá Circuit and the Superior Court of the Judicial District of Bogotá took into account to convict the members of the Colombian Air Force,

[45] Namely: (a) The death certificate and/or record of the removal of the corpse of Rodolfo (or Rodulfo) Carrillo Mora; (b) complete and accurate information possessed by State agencies on the population that really lived in Santo Domingo on December 13, 1998; (c) complete and accurate information on the population registered as displaced from the village of Santo Domingo in relation to the events of December 13, 1998; (d) copy of the contracts signed by the Cravo Norte Association and Airscan International Inc., and certification of the contractual relationship between this company and J.O., C.D. and D.M., and (e) complete, updated and accurate information on the measures of deprivation of liberty against C.R.P., J.J.V. and H.M.H.

[46] The State did not forward complete information on the population registered as displaced from the village of Santo Domingo in relation to the events of December 13, 1998, nor did it forward a copy of the contract signed by the Cravo Norte Association and Airscan International Inc., or the certification of the contractual relationship between this company and J.O., C.D. and D.M., or the death certificate and/or record of the removal of the body of Rodolfo Carrillo Mora.

> "1. […] that it make a written request to the Supreme Court of Justice of Colombia to issue a copy of the whole criminal proceedings opened against the pilots for the events that occurred in Santo Domingo on December 13, 1998.
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> 2. […] that, if it considers it necessary to have authentic copies of the documents that the Colombian State is presenting as evidence and that are in the case file of the criminal proceedings opened against the crew of the UHIH aircraft, it make a written request to the Colombian Supreme Court of Justice that it send an authentic copy of the procedural documents, as the Colombian State had done on January 31, 2012," and
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> "3. […] that, if it considers it necessary to have authentic copies of the proceedings opened before the Attorney General's Office and before the Council of State, it make a written request to these entities to arrange the forwarding of the said procedural documents."

49. In this regard, in paragraph 39 of the above-mentioned Order of June 5, 2012, the President indicated that "at the appropriate moment, the Court will decide on the pertinence of requesting the documentation referred to by the State [in its considering paragraph 38]," transcribed in the preceding paragraph.

50. On June 28, 2012, the State forwarded, on its own initiative, copies of "the whole criminal case file." In a note of the Secretariat of July 4, 2012, the State was reminded that, in the said Order, the President of the Court had not requested the documentation indicated in its considering paragraph 38. Consequently, on the instruction of the Court in plenary, the documentation sent by the State was the sent out, in the understanding that its admissibility would be determined at the opportune procedural moment. Even though this documentation was time-barred, because the State had the opportunity to present it with its answer to the submission if it considered it useful and necessary to prove its arguments, and it had not been requested by the Court, it is incorporated into the file of the instant case insofar as some of these documents were referred to by the parties in their briefs, or in other evidence provided at the appropriate time, and may be useful to decide this case.

51. In addition, the representatives forwarded, as an attachment to their final written arguments, a resolution issued by the Colombian Prosecutor General's Office on July 24, 2012, in relation to what they consider a supervening fact. The State asked the Court to incorporate this document and presented its own observations on the value or probative implications of the resolution. This document is incorporated into the case file and will be assessed together with the body of evidence and as appropriate in this case. The other attachments presented by the representatives with their final arguments are inadmissible, because they were not submitted at the appropriate procedural opportunity, without any justification based on the causes established in Article 57(2) of the Rules of Procedure and will only be taken into account, as pertinent, as part of their arguments.

C. Admission of the statements of the presumed victims and of the testimonial and expert evidence

52. The Court also admits as evidence the statements and opinions provided by the presumed victims and by the expert witnesses during the public hearing and by affidavit and, consequently, they will be assessed together with all the other elements of the body of evidence.[47]

VI
FACTS

A. Context in the department of Arauca

53. The department of Arauca is located in the northeast of Colombia, bordering Venezuela, and is divided into seven municipalities: Arauca, Arauquita, Saravena, Cravo Norte, Fortul, Puerto Rondón and Tame. The municipality of Tame is situated in the extreme south-west of the department, where two main highways meet: the Liberators Route (Bogotá-Tuna-Tame-Arauca-

[47] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 22, para. 43, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 40.

Caracas) and the main road across the plains (Bogotá-Villavicencio-Yopal-Tame-Saravena). In addition, this municipality is the distribution point for land traffic towards Puerto Rondón, Cravo Norte and Fortul.[48] The hamlet of Santo Domingo is in the last-mentioned municipality.[49]

54. In 1998, Santo Domingo was a village in the rural area of the municipality of Tame with a population of 247 persons living in around 47 houses[50] located beside the highway that leads from Tame to the capital of the department.[51]

55. Regarding aspects relating to economic geography, there is no dispute about the fact that petroleum exploitation is one of the most important economic activities of the department.[52] In 1983, the multinational company, *Occidental Petroleum Corporation* (hereinafter "OXY"), discovered the Caño Limón oilfield.[53] Ever since its discovery, OXY has been operating the Caño Limón oilfield, and the oil is transported by the Caño Limón–Coveñas pipeline operated by the Colombian company, ECOPETROL S.A.[54]

56. In addition, there is no dispute that the armed conflict in Arauca is closely related to the revenue derived from the oil and the location of the Caño Limón-Coveñas pipeline;[55] this is also a transit area for both legal and illegal merchandise and goods bound for Venezuela.[56] These factors make this region strategically important, and have resulted in the establishment of illegal armed groups since the 1980s.[57]

57. As alleged by the representatives, observed by the Commission, and acknowledged by the State, in 1998, a situation of generalized violence existed in the department of Arauca, which affected both the civilian population and the civil authorities.[58] In addition, during the 1990s, there was increased militarization in the department of Arauca.[59]

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[48] *Cf.* Information available at: http://www.tame-arauca.gov.co/nuestromunicipio.shtml?apc=mIxx-1-&m=f#geografia (visited on September 26, 2012). Electronic link cited by the representatives in the pleadings and motions brief (merits file, tome 1, folio 124).

[49] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folios 172 and *ff*.).

[50] *Cf.* Note from the President of the Municipal Association of Community Action Committees of Tame, department of Arauca of July 18, 2012 (evidence file, tome 51, folio 28048).

[51] *Cf.* Information from the "Joel Sierra" Regional Human Rights Committee in the petitioners' brief of August 15, 2006, received by the IACHR on August 21, 2006, p. 8 (evidence file, tome 5, folio 2570.

[52] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 2826).

[53] *Cf.* Official website of *OXY* Colombia. Information available at September 26, 2012, at: http://www.oxy.com/OurBusinesses/OilAndGas/LatinAmerica/Pages/colombia.aspx. Electronic link cited by the Commission in the Merits Report (merits file, tome 1, folio 16).

[54] *Cf.* Ecopetrol S.A. is a mixed economy commercial company, organized as a national limited company (*sociedad anónima*), attached to the Ministry of Mines and Energy, under the provisions of Law 1118 of 2006, governed by the articles of incorporation which are contained in Public Deed No. 5314 of December 14, 2007, granted by the Office of the Second Notary of the Notary Circuit of Bogotá D.C. Information available at: http://www.ecopetrol.com.co/contenido.aspx?catID=30&conID=38178 (visited on September 26, 2012). Electronic link cited by the Commission in the Merits Report (merits file, tome 1, folio 16).

[55] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 173), and the State's answering brief (merits file, tome 2, folio 398).

[56] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 173).

[57] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 174).

[58] In this regard, the United Nations High Commissioner for Human Rights stated, in general, in relation to the general situation of the country, without referring specifically to the events of Santo Domingo, that "[i]n their counter-

58. According to the Human Rights and International Humanitarian Law Observatory of the Vice Presidency of the Republic, the guerrilla of the National Liberation Army (hereinafter also "ELN") settled in Arauca as one of the main scenarios of its actions in the middle of the 1970s, while the FARC guerrilla arrived in the department at the beginning of the 1990s.[60]

59. In July 1980, Ecopetrol and OXY signed the Cravo Norte collaboration agreement, for the exploration and exploitation of hydrocarbons in the department of Arauca.[61] It is an undisputed fact that, owing to the difficult situation of public order that affected the operation of the pipeline, ON September 12, 1996, Ecopetrol and OXY (as Cravo Norte Association) signed a cooperation agreement in which the mining companies undertook to provide financial assistance to support units of the 18th Brigade.[62]

B. Events preceding the bombardment of December 13, 1998

60. On December 12, 1998, a fair was being held in the village of Santo Domingo[63] that included various sporting events.[64] Thus, the representatives specified, and the State did not contest, that in addition to the inhabitants, visitors from nearby villages were also present.[65]

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offensives, the armed forces also caused numerous civilian casualties, particularly as a result of aerial gunfire and bombing." Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, E/CN.4/1999/8, 16 March 1999, para. 119. *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 173), and the State's answering brief (merits file, tome 2, folio 398).

[59] *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 174).

[60] During the 1980s, the FARC presence was merely incipient, and only manifested by a slight increase in the strategy of illegal occupation in the eastern Cordillera starting in 1990, a process accelerated by the attack on Casaverde, which obliged the FARC to increase the mobility of its fronts. *Cf.* Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, *Algunos indicadores sobre la situación de derechos humanos a septiembre de 2004 en el departamento de Arauca* (evidence file, tome 2, folio 2827), and Observatory of the Vice President of the Republic on Human Rights and International Humanitarian Law. *Colombia, conflicto armado, regiones, derechos humanos and DIH*. 1998-2002. Also available at: http://www.derechoshumanos.gov.co/Pna/documents/2010/arauca/indicadoresarauca.pdf (last visited on October 18, 2012). Electronic link cited by the Commission in its Merits Report (merits file, tome 1, folio 17) and by the representatives in the pleadings and motions brief (merits file, tome 1, folio 26).

[61] The Cravo Norte Association contract was signed on June 11, 1980, by Ecopetrol and *Occidental de Colombia*, over an initial area of 1,003,744 hectares. On June 18, 1983, oil was discovered and, on November 15, 1983, Ecopetrol awarded its exploitation. Under this contract the oilfields of Caño Limón, La Yuca, Caño Yarumal, Matanegra, Redondo, Caño Verde, Redondo Este, La Yuca Este, Tonina, Remana and Jiba were discovered in the watershed of the Llanos Orientales. Occidental is the operator of the oil fields that have been discovered, and Ecopetrol is the operator of the Caño Limón-Coveñas pipeline." Information available at October 18, 2012, at: http://www.presidencia.gov.co/prensa_new/sne/2004/abril/20/11202004.htm. Electronic link cited by the Commission in the merits report (merits file, tome 1, folio 16).

[62] This information was provided by the representatives in their pleadings and motions brief (merits file, tome 1, folio 127) and by the State in its brief answering the application (answering brief, folio 473). The representatives added that "the criminal investigation conducted in the case […] revealed that the oil enclave's support to the 18th Brigade also included the use of OXY facilities to plan military operations, and even human resources that, even though their contractual function was to monitor the oil pipeline, had played an important role – at least in operation "*Relámpago II*" – in the conduct of military activities. As evidence, they provided: 46th Military First Instance Court: procedure to ratify report signed by Lieutenant Guillermo Olaya Acevedo dated February 25 1999 (evidence file, tome 15, folio 7595), and Military Criminal Investigation Unit. 122nd Military First Instance Court: continuation of the statement made by Major Cesar Augusto Gomez Marquez, August 3, 2001 (evidence file, tome 15, folios 7603 to 7612). For its part, the State contested that "[t]he Cessna Skymaster aircraft provided by Airscan entered the country under the military operation regulations of the Colombian Air Force"; and indicated that the "said aircraft was never equipped with weapons of any kind" and that "[i]n December 1998, there was no contractual relationship between [OXY] and Airscan" (merits file, tome 2, folio 473).

[63] The 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First instance judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folios 6350 to 6352). See also, Video of inspection procedure of December 28, 1998, minute 01:08 (evidence file, tome 19, folio 9619).

61. It is also an uncontested fact that, the same day, the Armed Forces noted that a Cessna light plane landed with money or weapons for drug-trafficking activities,[66] on the highway that leads from the village of Santo Domingo to Panamá de Arauca or Pueblo Nuevo.[67] Subsequently, after the aircraft had landed, troops from the 36th Counter-Guerrilla Battalion and units of the Air Force "proceeded to immobilize the aircraft, but the operation was interrupted by a group of bandits who confronted the troops using long-range weapons […]."[68] As a result of the foregoing, the Armed Forces planned an airborne military operation.[69] During this, the National Army's 18th Brigade and the 36th Counter-Guerrilla Battalion, in execution of the military operations known as "*Relámpago"* and *"Pantera,"* respectively, began a military operation that lasted several days.[70]

62. It is an undisputed fact that, in the context of the design and organization of the operation, a briefing was held within the Air Force, during which planning was discussed,[71] such as with regard to defining the means to be used. Specifically, the use of several aircraft was decided, one of them loaded with an AN-M1A2 cluster bomb.

63. The AN-M1A2 cluster bomb[72] is manufactured in the United States of America; it apparently measures 46.6 inches and weighs 128 pounds[73] and is composed of six AN-M41A1 fragmentation

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64 *Cf.* Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012. Alba Yaneth García stated the following before the Court: "[t]hat day, December 12, we were having an event, or rather a charity fair to collect funds for our school. On the 12th we were all very happy waiting for the charity fair; all of us assembled as a family, and waiting for friends who were arriving from the villages around Santo Domingo to take part in the charity fair." See also, the Statement of Wilson García Reatiga, before the Attorney General's Office, National Special Investigations Directorate, Human Rights Unit, in Saravena, Arauca, on June 17, 1999 (evidence file, tome 8, folios 3737 to 3743), and 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6352).

65 *Cf.* Statement of Excelino Martínez Rodríguez, before the Attorney General's Office, National Special Investigations Directorate, Human Rights Unit, in Saravena (Arauca) on June 17, 1999, (evidence file, tome 8, folios 3724 to 3726).

66 *Cf.* Communication No. 2577 of the Colombian Military Forces, National Army, 18th Brigade, "Report and denunciation of events" made by Major O.W.P.H., on December 14, 1998 (evidence file, tome 15, folio 7704), and Report on operations in the area of Santo Domingo of the Colombian Military Forces, Air Force, of December 17, 1998 (evidence file, tome 19, folios 10119 and 10120).

67 The said aircraft was followed by an Army Black Hawk helicopter, which noted that its maneuvers were suspicious. The members of the Military Forces believed that it was transporting a ton of cocaine to the department of Vichada. The occupants of the small aircraft, a single motor bearing the license number HK-2659, were able to land on a clandestine airstrip located in Caño Verde, near the village of Santo Domingo. *Cf.* Communication No. 2577 of the Colombian Military Forces, National Army, 18th Brigade, "Report and denunciation of events" made by Major O.W.P.H., on December 14, 1998 (evidence file, tome 15, folio 7704), and the Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome12, folios 6350 and 6361, and tome 15, folio 10534).

68 Communication No. 2577 of the Colombian Military Forces, National Army, 18th Brigade, "Report and denunciation of events" made by Major O.W.P.H., on December 14, 1998 (evidence file, tome 15, folios 7704 and 7705); Report on operations in the area of Santo Domingo of the Colombian Military Forces, Air Force of December 17, 1998 (evidence file, tome 19, folios 10119 and 10120); Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125), and note No. 2573/DIV2-BR18-B2-INTI Arauca, of December 12, 1998, signed by Major O.W.P.H., 10th Brigade B2 Officer, addressed to 19th Regional Prosecutor delegated to the DAS and the SIJIN (evidence file, tome 15, folios 7719 and 7720).

69 *Cf.* Patrol report, *Comuneros* 36th Counterinsurgency Battalion of December 24, 1998 (evidence file, tome 15, folios 7722 to 7728).

70 *Cf.* Report on operations in the area of Santo Domingo of the Colombian Military Forces, Air Force of December 17, 1998 (evidence file, tome 15, folios 10119 and 10120); Patrol report, *Comuneros* 36th Counterinsurgency Battalion of December 24, 1998 (evidence file, tome 15, folios 7722 to 7728), and testimony provided by General Jairo García before the Court during the public hearing before the Court on June 5, 2012; 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome12, folio 6361 and *ff*.).

71 *Cf.* Statement made by Captain G.O.A. (Liaison officer during the operation in Santo Domingo) before the 122nd Military Court of First Instance of the IPM, on March 1, 2001 (evidence file, tome 15, folio 7710), and Statement made by Lieutenant G.D.L.S. before the 46th Military Criminal Court of First Instance, of February 9, 1999 (evidence file, tome 15, folio 10107).

72 These are AN-M41A1 bombs and they were launched with M1A2 adapters; the system was known as an AN-M1A2 Cluster fragmentation Bomb. Communication No. 201226410020931 of February 17, 2012, from Colonel C.H.T.T., Head of

bombs or grenades each weighing 20 pounds, secured by a rapid release adapter,[74] with the same purpose as that of a fragmentation bomb; namely to attack persons or light cars.[75] These grenades or fragmentation bombs are designed for air-to-ground launch from an aircraft[76] and, when they explode they break up into fragments that scatter.[77] According to the technical manual of the device, in the case of a low-level launch of the device at an impact angle of 75º, the maximum scope of the dispersion is less than 30 meters and, beyond 13.4 meters, the impact does not have a lethal effect.[78] Nevertheless, it is important to underline that, from the evidence provided it can be concluded that the effects vary based on the residual speed of the bomb at the moment of impact, the angle of fall,[79] the height of the detonation, and the type of ground on which it lands.[80] In this regard, the Court observes that, in the ballistic appraisal made during the inspection procedures with a field test carried out at the Apiay Air Base on August 12, 2003, in which devices similar to the one used in the confrontations near Santo Domingo were launched, it was verified that fragments of the bombs were gathered "at 100 meters from around each of the six craters."[81]

64. It is also an undisputed fact that, around 4 p.m. that day, several aircraft flew over the zone firing in areas very close to the village of Santo Domingo.[82] The Court observes that in the

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Aeronautical Operations (evidence file, tome 15, folios 9999 to 10001), and Statement made by Captain G.O.A. (Liaison officer during the operation in Santo Domingo) before the 122nd Military Court of First Instance of the IPM, on March 1, 2001 (evidence file, tome 15, folio 7710).

[73] *Cf.* Technical Manual No. 9-1325-200/ NAVWEPSS OP 3530/TO 11-1-28, Army, Navy and Air Force Departments, Washington, DC., April 29, 1966 (evidence file, tome 19, folio 10067).

[74] *Cf.* Technical Manual No. 9-1325-200/ NAVWEPSS OP 3530/TO 11-1-28, Army, Navy and Air Force Departments, Washington, DC., April 29, 1966 (evidence file, tome 19, folio 10067)

[75] *Cf.* Technical report on AN-M41A1 bombs, chief of logistical and aeronautical operations, No. 2112301231273 of December 23, 2011 (evidence file, tome 19, folio 10073).

[76] *Cf.* Ballistics and explosives inspection and examination, expansion of opinion, Job number BA-0066/2000, April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691; tome 2, folios 603 to 607), and Technical report on AN-M41A1 bombs, head of logistic and aeronautical operations, No. 2112301231273 of December 23, 2011 (evidence file, tome 19, folios 10072 to 10087).

[77] *Cf.* Judgment of the 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folios 356 and 357, 364 and 365). See also: Ballistics report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, folios 21266 and *ff*.); Photographic report No. 128269 of Job number 554-2003, Prosecutor General's Office, Case file No. 419 (evidence file, tome 12, folios 6072 to 6101); Inspection procedure conducted at the Colombian Air Force Base in Apiay (Meta) National Human Rights and International Humanitarian Law Unit, Prosecutor General's Office, Case file No. 419 (evidence file, tome 17, folios 8849 to 8852), and Judgment of the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, Judgment of June 15, 2011, deciding the appeal filed against the first instance judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folios 8456 and 8457).

[78] *Cf.* Technical manuals of the AN-M1A2 explosive device (evidence file, tome 19, folios 10050 to 10087); Declassified document N-4636- A, Terminal Ballistic Data, Bombing, volume 1, August 1944, part 3, pp. 64, 73 to 77; Manual US ARMY TM 9-1997/TO 39 B-1-6, Ballistic Data Performance of Ammunition, July 1948, chapter 2, p. 62; Declassified document N-4636- C, Terminal Ballistic Data Bombs, Artillery & Mortar Fire and Rockets, volume 3, September 1945, part 1, p. 1 (evidence file, tome 19, folios 10050 to 10087).

[79] The technical manuals of the AN-M1A2 explosive device provided as evidence indicate, in particular, that, for example, that for a launch from height at an angle of 84º, the effects of the device are different. Technical manuals of the AN-M1A2 explosive device (evidence file, tome 19, folio 10080).

[80] *Cf.* Technical report on AN-M41A1 bombs, chief of logistical and aeronautical operations, No. 2112301231273 of December 23, 2011 (evidence file, tome 19, folio 10078) and Technical manuals of the AN-M1A2 explosive device (evidence file, tome 19, folios 10050 to 10087).

[81] *Cf.* Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, folios 21268 and 21270. Similarly, in its First Instance Judgment, the 12th Criminal Court of the Trial Circuit of Bogotá referred to the Statement of the commander of the Apiay base, referring to an AN-M1A2 device, that "each cluster bomb […] can generate a theoretical range of action of 150 meters, depending on its dispersion," 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folios 6387 and 6388).

[82] *Cf.* Statement of María Panqueva before the 124th Criminal Court of First Instance in Arauca on December 21, 1998 (evidence file, tome 2, folio 451, and annex 8 to the Merits Report, folio 643 and *ff.),* and 12th Criminal Court of the

"*Pantera*" operational orders for December 12, 1998, the Commander of the 36th Counter-Guerrilla Battalion, Major J.M.G., determined that its mission was "to execute military search and control operations in the sector near the village of Santo Domingo […] in order to capture the subversive group committing crimes in the sector."[83]

65. In addition, it was not disputed by the State that a partial "*Pantera II*" operational order was issued on the same date in which the Commander indicated that the said operation "consist[ed] in executing an offensive operation against the guerrilla by means of an airborne mission […] to the area of Santo Domingo" and orders were given to carry out counter-guerrilla offensives to occupy militarily and search the Santo Domingo sector, Tame municipality, starting at 6 a.m. on December 13, 1998.[84]

66. The evidence provided and the arguments presented confirm that the gunfire intensified during the night, ceased in the early hours, and resumed at approximately 5.30 a.m. on December 13, 1998.[85]

67. The representatives added, and the State did not contest, that owing to the proximity of the hostilities, those who attended the game of football had to spend the night in Santo Domingo.[86] As a preventive measure, during the night some inhabitants kept their lights on to identify themselves as civilian population.[87]

C. The bombing of the village of Santo Domingo on December 13, 1998, and subsequent events

C.1. Undisputed facts

68. It is an uncontested fact that, on December 13, 1998, several aircraft flew over the area around Santo Domingo during the morning and in greater numbers after 9 a.m.[88] The aircraft were

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Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 327).

83 *Cf.* Statement of Major J.M.G. (Commander of the 36th Counterinsurgency Battalion) of December 12, 1998, cited in: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 338).

84 *Cf.* Operations order (unnumbered), *Pantera*, Tactical Campaign Plan, 18th Brigade, 1998, Map of the department of Arauca (evidence file, tome 15, folio 7745). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 338).

85 *Cf.* Statement of María Panqueva before the 124th Criminal Court of First Instance in Arauca on December 21, 1998 (evidence file, tome 2, folio 451 and folio 645); Statement of Marcos Neite before the 124th Criminal Court of First Instance in Arauca on December 21, 1998 cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 451 and 452), and Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012. See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 327).

86 *Cf.* Statement of Edwin Fernando Vanegas before the 124th Criminal Court of First Instance in Arauca on December 14, 1998 (evidence file, tome 2, folio 423).

87 *Cf.* Complaint filed by Luz Nelly Benítez on December 16, 1998, before the Tame Municipal notary (evidence file, tome 2, folio 3144), and complaint filed by Amalio Neite on December 16, 1998, before the Tame Municipal notary (evidence file, tome 2, folio 493). In this regard, "that same day, at 3 p.m., on the Santo Domingo football field, the villages of Caño Verde and Caño Limón began a fiercely-fought game. The players had been struggling to obtain the ball for five minutes […] when, suddenly, players and their fans saw a small aircraft that was flying over the village. The game stopped immediately […]." Newspaper article, *El Espectador*, "*Un Partido de muerte*" of December 23, 1998 (evidence file, tome 14, folio 7351). See also: Complaint filed by Luz Nelly Benítez on December 16, 1998, before the Tame Municipal notary (evidence file, tome 2, folio 3144), and complaint filed by Amalio Neite on December 16, 1998, before the Tame Municipal notary (evidence file, tome 2, folio 493).

88 *Cf.* Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125); Statement of Marcos Neite before the Court 124 of the Military Criminal Investigation Unit, of December 21, 1998 (evidence file, tome 2, folio 494); Statement of Amalio Neite Gonzalez before the 124th Criminal Court of First Instance, on December 21, 1998 (evidence file, tome 2, folio 493). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome12, folio 6350).

subsequently identified as: (i) a UH 60L armed Black Hawk helicopter, under the commanded of Major S.G. (call sign: "*Arpía*" [Harpy Eagle]); (ii) a UH1H 4407 helicopter with cluster bombs, piloted by Lieutenant C.R.P. (call sign: "*Lechuza*" [Owl]); (iii) a Hughes–500 armed helicopter under the command of Lieutenant L.S. (call sign: "Hunter"); (iv) a Skymaster plane crewed by two foreigners and the Colombian Air Force Captain C.G. (call sign: "*Gavilán*" [Hawk]); (v) a UH 60 helicopter, piloted by Captain R.G.G. (call sign: "Spock"), and (vi) a MI 17 helicopter owned by the company Heliandes piloted by a civilian (call sign: "*Pegaso*" [Pegasus]).[89] In its answering brief, the State acknowledged that the UH1H helicopter carried an AN-M1A2 cluster device.

69. In addition it has not been disputed that, during the operations in the area, at 10:02:09 a.m., the crew of the Colombian Air Force UH1H 4407 helicopter composed of the pilot Lieutenant C.R.P., he co-pilot, Lieutenant J.J.V., and the aircraft technician H.M.H.A., launched a cluster device ("AM-N1A2").[90]

70. Similarly, it was not disputed that 17 individuals died as a result of the events that occurred between December 12 and 14 in Santo Domingo,[91] of whom six were children. In addition, according to the Commission's Merits Report,[92] 27 individuals were injured,[93] including 10 children.[94]

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89 *Cf.* Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125). See also: 12th Criminal Court of the Bogotá Trial Circuit with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 2980 and 2994).

90 *Cf.* Skymaster video at 10:02:09 a.m.; Note No. 226 *Diara-Seman* 412 Air Force, information on precedence of cluster bombs, of February 22, 2001 (evidence file, tome 15, folio 7811); Communication of December 30, 1998, "*Relampago 2*" Operation, Colombian Military Forces, Air Force (evidence file, tome 19, folio 10021 to 10026); Statement made by Captain Guillermo Olaya Acevedo (Liaison officer during the operation in Santo Domingo) before the 122nd Military Court of First Instance of the IPM, on March 1, 2001 (evidence file, tome 15, folio 7713), and Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folio 10124). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 2998 and 2999).

91 Those who died as a result of the cluster bomb were: Jaime Castro Bello, Luis Carlos Neite Méndez, Egna Margarita Bello, Katherine (or Catherine) Cárdenas Tilano, Oscar Esneider Vanegas Tulibila, Geovani Hernández Becerra, Levis Hernando Martínez Carreño, Teresa Mojica Hernández de Galvis, Edilma Leal Pacheco, Salomón Neite, María Yolanda Rangel, Pablo Suárez Daza, Carmen Antonio Díaz Cobo, Nancy Ávila Castillo (or Abaunza), Arnulfo Arciniegas Velandia (or Calvo), Luis Enrique Parada Ropero and Rodolfo Carrillo.

92 It should be noted that in Admissibility Report 25/03, the Inter-American Commission determined that 25 people had been injured based on the information provided by the petitioners, which was, in turn, based on the number of injured people included in the ruling deciding the legal situation issued by the Special Military Criminal Investigation Unit on June 14, 2001. However, on February 24, 2009, during the merits stage of the matter, the first instance judgment in the criminal proceedings was handed down, which included among the injured persons, two people who were not on the initial list in the Admissibility Report. Consequently, in its Merits Report, the Commission considered the 27 persons named in this Report as victims of injuries caused by the cluster device.

93 The following persons were injured: Marcos Neite, Erinson Olimpo Cárdenas, Hilda Yuraime Barranco, Ricardo Ramírez, Yeimi Viviana Contreras, Maryori Agudelo Flórez, Rosmira Daza Rojas, Neftalí Neite, Alba Yaneth García, Fernando Vanegas, Milciades Bonilla Ostos, Ludwing Vanegas, Xiomara García Guevara, Mario Galvis, Fredy Monoga Villamizar or Fredy Villamizar Monoga), Mónica Bello Tilano, Maribel Daza, Amalio Neite González, Marian Arévalo, José Agudelo Tamayo, María Panqueva, Pedro Uriel Duarte Lagos, Lida Barranca, Ludo Vanegas, Adela Carrillo, Alcides Bonilla and Fredy Mora. 23 of those who were injured were identified during the following judicial proceedings: 12th Criminal Court of the Bogotá Circuit, Judgment of September 24, 2009, p. 64 (evidence file, tome 2, folio 364); Attorney General's Office. Disciplinary Chamber. Case file 161-01640 (155-45564/2000). December 19, 2002 (evidence file, tome 4, folio 1571); Judgment of the Contentious Administrative Court of Arauca, Mario Galvis Gelvez *et al.*, case file No. 81-001-23-2000-348, May 20, 2004 (evidence file, tome 20, folios 10180 to 10274). In the decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 390 to 392; 420 to 422), based on the Public Denunciation and Declaration of the Town Meeting held in the municipality of Tame on December 17, 1998 (evidence file, tome 15, folio 7677 and *ff.),* four more victims were identified, for a total of 27 victims. See also, Diplomatic note DDH. GOI/71945 signed by the Director for Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of December 27, 2005 (evidence file, tome 5, folio 2210); Medical records (evidence file, tome 19, folios 9812 to 9931), and newspaper article, *El Espectador*, "*Lo que dijo la Human Rights Watch*", December 23, 1998 (evidence file, tome 14, folio 7351).

94 *Cf.* Video procedure of February 11,l 2000 (evidence file, tome 19, folio 9620), and Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691), and Decision issued by the Colombian Military Forces, Air Force, and the Special Military Criminal Investigation Unit on June 14, 2001 (evidence file, tome 2, folios 421 and 422). See also: 12th

C.2. Disputed facts

71. Regarding the other specific facts concerning the presumed bombardment of the village of Santo Domingo on December 13, 1998, the Court observes that, as argued by the parties and concluded by the Commission, there are two versions of what happened.

72. On the one hand, the testimony of inhabitants of Santo Domingo indicates that the AM-N1A2 cluster bomb was launched on the urban area of the village of Santo Domingo.[95] This hypothesis is also supported by the ballistics and explosives inspection and examination report of the Attorney General's Office, according to which, "after comparing some of the fragments recovered during the judicial inspections in Santo Domingo and the autopsies of some of the victims of the explosions of December 13, 1998, with the pieces that compose an AN-M1A2 bombs, the compatibility and correspondence of their morphology and dimensions was observed, specifically with the iron rib or rings that cover the body of this type of bomb longitudinally. Also, other fragments of aluminum and brass recovered at the site of the facts […] correspond to the head or nose of the AN-M1A2 fuse […]."[96] This hypothesis is also supported by the conclusions of the judgment of the 12th Criminal Court of the Trial Circuit of Bogotá D.C, in which the pilots of the Colombian Air Force UH1H 4407 helicopter were declared responsible,[97] which was confirmed by the Superior District Judicial Court of Bogotá,[98] and by the measures taken in the contentious-administrative jurisdiction that reflect integrally the proceedings in the criminal jurisdiction.[99] Likewise, the disciplinary proceedings produced the same results and punished those accused of the events of Santo Domingo.[100]

Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folios 376 and 377).

95 *Cf.* Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012, Statement of María Panqueva, Testimony provided on December 21, 1998, before the 24th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 643 to 645); Statement of Amalio Neite, Testimony provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 654 and 655); Statement of Luis Sel Murillo Villamizar, Statement made by Luis Sel Murillo Villamizar on December 22, 1998, before the 12th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 650 to 652); Statement of Nilsa Diaz Herrera, Testimony provided on December 22, 1998, before the Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 647 and 648), and Statement of Adán Piñeros, Statement made on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folio 657). See also, Complaint filed by Ascención Daza Galindo on December 17, 1998, before the Tame municipal notary, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 496); Complaint filed by María Antonia Rojas before the Tame municipal notary, on December 17, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 496 and 497), and Complaint filed by Carmen Edilia Gonzalez before the Tame municipal notary, on December 18, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 497). See also, Decision issued by the Colombian Military Forces, Air Force and the Special Military Criminal Investigation Unit on June 14, 2001 (evidence file, tome 2, folios 421 and 422); Video procedure of February 11, 2000 (evidence file, tome 19, folio 9620); Letter send by the Tame municipal notary (Arauca) to the United Nations High Commissioner for Human Rights dated December 14, 1998 (evidence file, tome 15, folios 7813 and 7814), and 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folios 2954 and 2955).

96 *Cf.* Ballistics and explosives inspection and examination, expansion of report, job number BA-0066/2000, April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691; tome 2, folio 603 to 607).

97 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folios 300 and *ff*.).

98 *Cf.* Superior Court of the Bogotá Judicial District, Criminal Chamber, Judgment of June 15, 2011, deciding the appeal filed against the First Instance Judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folios 8414 and *ff.*; 10717 and *ff.*).

99 *Cf.* Judgment of November 19, 2008, Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No 07001-23-31-0002000-0348-01, Councilor Rapporteur: Ramiro Saavedra Becerra (evidence file, tome 3, folios 1046 to 1127), and Judgment of May 20, 2004, Contentious Administrative Court of Arauca. Action for Direct Reparation (evidence file, tome 20, folios 10233 and 10234).

100 *Cf.* Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folios 969 to 1034).

73. However, there is a second version of the facts that can be inferred from the statements made by members of the Air Force,[101] according to which, the Air Force launched a light bomb, not on the village, but on wooded area more than 500 meters from the village of Santo Domingo.[102] In addition, under this hypothesis, the civilian were victims of an explosive device installed by members of the FARC in the back of a truck on the main street of the village,[103] so that the deaths and injuries of the individuals described above could not have been caused by the State.[104] It is worth underlining, also, that, during the criminal proceedings, the soldiers presented two versions of the facts of the case: some of them denying the use of the cluster device and the others acknowledging this, but indicating that it fell to the north of the village of Santo Domingo.[105]

74. The Court observes that the arguments and the evidence in the case file reveal that there are also two versions of the presumed machinegun attack against the civilian population that was leaving the village of Santo Domingo after the explosion during the morning of the same day. On the one hand, the testimony of several inhabitants of Santo Domingo and other persons present indicates that after 10 a.m., the Colombian Air Force attacked the people who were on the highway, walking or driving away from the village, from the aircraft with machine guns.[106] This version is disputed by the State, which argues that the Air Force did not fire machine guns against the civilian population or on the village of Santo Domingo, based on the fact that, according to the autopsies and the medical records, the presumed victims did not have injuries produced by this type of weapon,[107] and that the film recording the mission shows that, even though the possibility of carrying out a persuasive action was discussed in order to halt the vehicle and verify whether members of the FARC were riding in it, this was not done, in view of the possibility that the civilian population might be harmed.

D. Displacement of the inhabitants of Santo Domingo

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101 *Cf.* Testimony and statements of: G.L. of February 9, 1999 (evidence file, tome 19, folios 10106 and 10117); Army Lieutenant J.M.R. of December 16, 1998 (evidence file, tome 19, folios 10097 and 10098); Volunteer soldier C.J.P. of December 16, 1998 (evidence file, tome 19, folios 10099 to 10101); statement of L.E.C.M. of December 16, 1998, before the Saravena municipal notary (evidence file, tome 19, folios 10097 and 10098), and statement of Army Corporal P.P.O. of December 16, 1998 (evidence file, tome 19, folios 10104 and 10105).

102 *Cf.* Agustín Codazzi Institute, Sub-directorate of Geography and Cartography, map to scale of 1:000,000 with points and distance (evidence file, tome 19, folio 9945 and 9946), and the Santo Domingo operations report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125).

103 The State referred to the following evidence: Photograph of the main street of the village of Santo Domingo showing the place without any sign of craters six minutes after the launch of the AN-M1A2 device on December 13, 1998 (hour 10:08 a.m.) (evidence file, tome 19, folio 9605); Technical appraisal No. 001 of January 7, 1999, Colombian Military Forces, General Inspectorate, Colombian Air Force (evidence file, tome 19, folios 9600 to 9603); Note No. 132 of February 4, 1999, expansion of ballistic and explosives report of December 28, 1998, prepared by the Technical Investigation Unit (CTI) of the Prosecutor General's Office (evidence file, tome 19, folio 9576), and Skymaster video of December 13, 1998, that recorded the whole operation carried out by the Air Force (evidence file, tome 19, folio 9621).

104 *Cf.* Autopsies performed in Tame (Arauca); Autopsies performed in Arauca (Arauca), and Autopsies performed in Saravena (Arauca) by the National Institute of Legal Medicine and Forensic Science, Eastern region (evidence file, tome 19, folios 9752 to 9810), and Medical Records (evidence file, tome 19, folios 9811 to 9931).

105 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 330).

106 *Cf.* Statement of María Panqueva provided on December 21, 1998, before the 24th Military Criminal Court of First Instance (evidence file, tome 2, folios 643 to 645); Statement of Nilsa Días Herrera provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 647 and 648); Statement of Luis Sel Murillo Villamizar provided on December 22, 1998, before the 24th Military Criminal Court of First Instance (evidence file, tome 2, folios 650 to 652); Statement of Amalio Neite provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 654 and 655); Statement of Adán Piñeros provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 656 and 657); Statement of Margarita Tilano provided on December 21, 1998, before the 124th Military Criminal Court of First Instance (evidence file, tome 4, folio 1474); Disciplinary Chamber of the Attorney General's Office, case file 161-01640 (155-45564/2000), December 19, 2002 (evidence file, tome 2, folios 609 and *ff.*), and Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 390 to 392; 420 to 422). Also, the statement of Alba Janeth García before the Court during the public hearing.

107 *Cf.* Autopsies and medical records (evidence file, tome 19, folio 9752 and *ff.*).

75. It is an undisputed fact that, as a result of the facts of December 13, 1998, the population of Santo Domingo had to abandon their homes and move to the village of Betoyes in the municipality of Tame, and to the towns of Tame and Saravena.[108] The displacement began during the early hours of the morning,[109] but increased after 10 a.m., when groups of people left Santo Domingo.[110] Starting at 10.21 a.m., as can be seen from the Sky Master video and as indicated by the testimony of several inhabitants of Santo Domingo,[111] the mobilization of the villagers was assisted by a white truck in which several people – some of them wounded – were taken away from the village.[112]

76. In a statement of December 15, 1998, the secretary of government of the municipality of Tame at the time called attention to the number of displaced people as a result of the events, and indicated that "[a]t least 200 people had abandoned hamlets and villages near Santo Domingo and had arrived in Tame seeking the government's protection and safety for their children. Those displaced had left the combat area in trucks fleeing from the armed conflict."[113] The same concern was expressed by the Governor of the department of Arauca at the time, who indicated that, in the days following the events of Santo Domingo, "almost 300 people were displaced," in a critical situation, especially the children.[114]

77. The Court observes, also, that the different inspections carried out in Santo Domingo in December 1998 reveal that the village was uninhabited following the events of December 13.[115]

78. It is also an undisputed fact that several of the villagers began to return in January 1999,[116]

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[108] *Cf.* Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 422 to 423); Public denunciation and declaration of the town hall meeting in the municipality of Tame, December 17, 1998 (evidence file, tome 15, folio 7681). See also, newspaper article: *El Tiempo*, "*Éxodo a Tame por combates*", December 15, 1998 (evidence file, tome 14, folio 7341), and newspaper article: *El Espectador*, *"Santo Domingo será Reconstruido"*, Judicial news, p. 9-A, December 26, 1998 (evidence file, tome 14, folio 7360; tome 16, folio 8227).

[109] *Cf.* Skymaster video of December 13, 1998 (07:21 a.m.; 07:38 a.m.; 07:42 a.m.; 08:39 a.m.; 09:16 a.m. to 09:36 a.m., and 09:49 a.m.), recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621).

[110] *Cf.* Skymaster video of December 13, 1998 (10:08 a.m.; 10:09 a.m.; 10:11 a.m.; 10:19 a.m., and 10:42 a.m.) recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 346).

[111] *Cf.* Testimony of María Panqueva provided on December 21, 1998, before the 24th Military Criminal Court of First Instance (evidence file, tome 2, folios 643 to 645); Testimony of Nilsa Días Herrera provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 647 and 648); Testimony of Luis Sel Murillo Villamizar provided on December 22, 1998, before the 24th Military Criminal Court of First Instance (evidence file, tome 2, folios 650 to 652); Testimony of Amalio Neite provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 654 and 655); Testimony of Adán Piñeros provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 656 and 657); Disciplinary Chamber of the Attorney General's Office, case file 161-01640 (155-45564/2000), December 19, 2002 (evidence file, tome 2, folios 609 and *ff.*); and Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 390 to 392; 420 to 422).

[112] *Cf.* Skymaster video of December 13, 1998 (10:21 a.m. to 10:43 a.m.) recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621).

[113] Newspaper article: *El Espectador*, "*La Fuerza Aerea Colombiana dice que no hubo bombardeos*", December 15, 1998 (evidence file, tome 14, folio 7354; tome 16, folio 8226).

[114] Newspaper article: *El Espectador*, "*Paro cívico in Arauca por muertes en Santo Domingo*", December 15, 1998 (evidence file, tome XIV, folio 7354; tome 16, folio 8226).

[115] *Cf.* Inspection procedure carried out by the 124th Court of the Military Criminal Investigation Unit in Santo Domingo, on December 17, 1998, taken from: Decision of the Criminal Investigation Unit, of June 14, 2001, p. 164 (evidence file, tome 2, folio 547). See also: Video of the measure taken of December 17, 1998 (minute 19:08), which records the first inspection carried out in the village of Santo Domingo. (evidence file, tome 20, folio 10175); Tame Mayor's Office, department of Arauca, December 29, 1998, answer to questionnaire of December 22, 1998, sent by the 12th Military First Instance Court to the Mayor of Tame (evidence file, tome 16, folio 8273 and 8274), and Record of December 28, 1998, Inspection procedure (evidence file, tome 19, folio 9570).

[116] Some of the villagers did not return to Santo Domingo and today they live in other parts of Colombia and even abroad. In this regard, see affidavit provided Mario Galvis (evidence file, tome 50, folio 27940); Affidavit provided by Hugo Fernely Pastrana Vargas (evidence file, tome 50, folio 27994), and Affidavit provided by Mónica Alicia Bello Tilano (evidence file, tome 50, folio 28025).

after which, on December 31, 1999, an inter-institutional cooperation agreement was signed between the department of Arauca and the Araucano Development Institute (hereinafter also "IDEAR"), in order to relocate, reconstruct and improve the 47 homes in Santo Domingo.[117]

E. Sacking, pillaging and destruction of property

79. It is an undisputed fact that after the Santo Domingo villagers had to abandon their homes and displaced as a result of the events of December 13, 1998, some of the homes were pillaged and damaged. This was confirmed when some of the inhabitants of the village returned days later to verify and quantify the damage to their property and the losses in general.[118] Similarly, there is no dispute about the fact that, as a result of the events that occurred on December 13 and 14, property and homes located in the village of Santo Domingo were destroyed or damaged. The pillaging and damage to property were also confirmed by two inspections carried out in the village. The first took place on December 14, 1998, and was conducted by a commission composed of the Ombudsman's Office and the Ministry of the Interior, and the second on December 28, 1998, to comply with the decision of the Commission of Delegate Prosecutors under case file No. 419 UNDH.[119]

F. The investigations into the death and injury of the presumed victims owing to the bombing of the village of Santo Domingo and subsequent events

F.1. The military criminal and ordinary criminal jurisdictions

80. On December 14, 1998, investigations were opened simultaneously in the civil jurisdiction and in the military criminal jurisdiction. In the ordinary justice system, the 41st Delegate Prosecutor to the Judges of the Tame Circuit (Arauca) ordered the opening of a preliminary investigation. In addition, on December 15, 1998, the then Commander-in-Chief of the Military Forces requested an investigation of the events; therefore, the Court of First Instance of Apiay (Meta department) took up the case.[120]

81. On December 17, 1998, a regional prosecutor of the National Human Rights Unit (UNDH) opened a preliminary investigation into the same events under file No. 419, in which he ordered various probative elements, including receiving testimony and an inspection of the scene of the events. On December 19, 1998, the initial measures taken by the Tame Prosecutor's Office were incorporated into the said file.[121]

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117 *Cf.* Inter-institutional cooperation agreement No. 0499 between the department of Arauca and the Araucan Development Institute, in order to relocate, reconstruct and improve the 47 houses in Santo Domingo, of December 31, 1999 (evidence file, tome 51, folios 28033 to 28037).

118 *Cf.* Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record made of the statement made by Wilson Garcia Reatiga, Tame (Arauca), June 17, 1999 (evidence file, tome 4, folio 1492); Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record made of the statement made by Luis Sel Murillo Villamizar, Tame (Arauca) June 19, 1999 (evidence file, tome 4, folio 1415). See also: Colombian Military Forces, Air Force Criminal Investigation Unit, Statement made by Olimpo Cárdenas, Tame (Arauca), December 28, 2000 (evidence file, tome XVI, folio 8206); Testimony of Luis Sel Murillo provided on December 21, 1998, before the 24th Military First Instance Court, pp. 2 and 3 (evidence file, tome 4, folio 1406), and Testimony of Jaime Rojas in newspaper article: *El Tiempo*, "*Dos historias distintas de un mismo ataque*", December 17, 1998 (evidence file, tome 14, folio 7353).

119 *Cf.* Record of December 28, 1998, Inspection procedure (evidence file, tome 19, folio 9570). See also: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 548 and 549); Statement made by Martin López Trigos, Attorney General's Office, National Special Investigations Directorate, Human Rights Unit. Record made on June 19, 1999 (evidence file, tome 16, folios 8269 to 8271), and Statement made by Luz Claudelina Estrada Chávez (Arauca) on June 17, 1999, taken from: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 483); Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007, case file 28,259 (evidence file, tome 2, folios 751 to 806), and also: Tame Mayor's Office, department of Arauca, December 29, 1998, answer to questionnaire of December 22, 1998, sent by the 12th Military First Instance Court to the Mayor of Tame (evidence file, tome 16, folios 8273 and 8274).

120 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 2955; digital file, folio 302).

121 *Cf.* Sole Sectional Prosecutor's Office delegated to the Court of the Tame Circuit (Arauca), Note No. 1319 of July 6, 2001 addressed to the 121st judge, Director of the Military Criminal Investigation Unit (evidence file, tome 16, folio 8555).

82. On January 12, 1999, the Apiay Court instructed the 118th Military Criminal Investigation Court to conduct a preliminary inquiry.[122]

83. As regards the investigation carried out in the military criminal jurisdiction, on December 28, 1998, the court decided "to abstain from opening criminal proceedings against the members of the National Army attached to the *Comuneros* 36th Counter-Guerrilla Battalion for the events that occurred on the morning of December 13, 1998, in the village of Santo Domingo."[123]

84. On March 29, 1999, the Criminalistics Division of the Administrative Department of Security (hereinafter "DAS"), carried out an expert appraisal on six samples of post-explosion residue.[124]

85. On May 20, 1999, the Military Preliminary Criminal Investigation Unit under a Colombian Air Force captain decided not to open an inquiry against the members of the latter for the deaths of persons in Santo Domingo during the fighting that took place from December 12 to 18, 1998.[125] The Public Prosecution Service appealed this decision and, as a result, the Military Preliminary Criminal Investigation Unit decided not to open an inquiry and to forward authenticated copies of the investigation to the Human Rights Unit of the Prosecutor General's Office where investigation 419 was already underway into the events of Santo Domingo, as well as to the Attorney General's Office in order to begin a disciplinary inquiry.[126]

86. On February 11, 2000, in the preliminary investigation opened by the National Human Rights Unit, a judicial inspection was conducted in the village of Santo Domingo, with the participation of the experts in ballistics and explosives of the Technical Investigations Unit (hereinafter also "CTI"), accompanied by a human rights prosecutor, a delegate of the Attorney General's Office, and an official from the Presidency of the Republic.[127]

87. On March 15, 2000, a judicial inspection was conducted at the Ordnance Warehouse of the Air Base of Apiay (Meta) in order to measure each piece of the AN-M1-A2 cluster bomb, to video them,[128] and to compare the pieces with the "post-explosion" fragments recovered during the judicial inspection in Santo Domingo.[129]

88. On March 17, 2000, the Prosecutor General's Office sent a letter to the legal attaché of the Federal Bureau of Investigation of the United States of America (hereinafter "FBI"), requesting a technical report to help clarify the facts.[130] On May 1, 2000, the FBI forwarded the technical report.[131]

89. On April 28, 2000, the reports of the judicial inspections and the topographical map were provided to the investigation. In order to make the expert appraisal, comparison patterns of the

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122 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 302).

123 Colombian Military Forces, National Army, 12th Military Criminal Court of First Instance, Arauca, December 28, 1998, writ of prohibition (evidence file, tome 15, folio 7772).

124 *Cf.* Expert appraisal of March 29, 1999, Administrative Department of Security (hereinafter "DAS"), General Directorate of Investigations, Criminalistics Division (evidence file, tome 19, folio 9694 to 9696).

125 *Cf.* Colombian Military Forces, Air Force, IPME Office, Apiay (Villavicencio, Meta), May 20, 1999 (evidence file, tome 16, folio 8557 and *ff*.).

126 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 302).

127 *Cf.* Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folio 9689 to 9691).

128 Video of the procedure carried out at Apiay made in 2003. Analysis headed by the CTI, demonstrating the destructive power and scope of an AN-M1A2 device launched from a helicopter (evidence file, tome 19, folio 9584).

129 *Cf.* Judicial inspection procedure of March 15, 2000, in the Weapons Warehouse of the Apiay Air Force Base (Meta), Prosecutor General's Office, National Human Rights Unit (UNDH), Case file 419 (evidence file, tome 16, folios 8658 to 8661; tome 19, folios 9698 to 9700).

130 *Cf.* Letter sent by the Prosecutor General's Office, on March 17, 2000, addressed to the FBI legal attaché (evidence file, tome 19, folios 9704 to 9706).

131 *Cf.* Technical Report of FBI Investigation dated May 1, 2000 (evidence file, tome 19, folios 9715 to 9726).

"fragments recovered from the autopsies of some victims of the explosions of December 13, 1998,"[132] and "information relating to the cluster bomb in the warehouse of the Apiay Air Base"[133] were taken into account.

90. On May 30, 2000, the Human Rights Unit of the Prosecutor General's Office decided to revoke the decision in which the military criminal jurisdiction abstained from opening an inquiry and, instead, ordered that an investigation be opened, indicated that the military criminal jurisdiction had competence to investigate the events of Santo Domingo as they concerned service-related acts.[134]

91. On August 23, 2000, Captain A.V. was again appointed to continue the proceedings. On August 28, 2000, the judge of the Military Criminal Investigation of the Apiay Air Base decided to take over the investigation "in order to analyze the supervening evidence sent by the prosecutor's office, ordering the reception of testimony."[135] At the same time an order was given to attach the measures taken by the prosecutor's office to those archived, thus constituting a single proceeding.[136]

92. On September 21, 2000, the Superior Court of Bogotá decided an application for *amparo* filed by the Colombian Air Force Captain C.R.P.,[137] who alleged that his right to due process had been violated. The ruling declared the partial nullity of the judicial decision of May 30, 2000, and the decision not to open an investigation against the crew of the UH1H helicopter was reinstated.[138]

93. On November 21, 2000, by Ministerial Decision No. 38, the Commander-in-Chief of the Military Forces, F.T.S., set up a special Military Preliminary Criminal Investigation Unit (hereinafter "UIPME") to investigate the facts, composed of a Colombian Air Force captain and two military preliminary criminal investigation judges. On February 9, 2001, the UIPME decided to revoke the writ of prohibition issued on May 20, 2000, by the military criminal courts and ordered formal proceedings to be instituted against the helicopter crew.[139]

94. On December 11, 2000, when the judge of Military Criminal Investigations of Apiay forwarded her the case file, the director of the UIPME took over the investigation and assigned it the number 001-J121.[140]

95. On February 9, 2001, the 121st Military Criminal Investigation Judge, director of the UIPME, decided to revoke the writ of inhibition issued on May 20, 1999, and ordered the opening of formal criminal proceedings against the crew of the UH1H helicopter, composed of Captain C.R.P.,

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[132] Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folio 9689).

[133] Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691).

[134] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 302).

[135] Decision revoking the writ of inhibition and re-opening of investigation, 121st Judge and Director, Military Investigation Unit, February 9, 2001 (evidence file, tome 16, folios 8671 to 8692).

[136] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 302).

[137] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 303).

[138] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 303).

[139] *Cf.* Decision revoking the writ of inhibition and re-opening of investigation, 121st Judge and Director, Military Investigation Unit, February 9, 2001 (evidence file, tome 16, folios 8671 to 8692).

[140] *Cf.* Colombian Military Forces, Air Force, Special Military Criminal Investigation Unit, decision of December 11, 2000, taking over the investigation under case file number 001-J121 (evidence file, tome 17, folios 8694 and 8695).

Lieutenant J.J.V, and Technician H.H.A., for the presumed crimes of homicide, bodily harm and damage to the property of others. [141]

96. On June 14, 2001, the UIPME issued a decision on the legal situation imposing preventive detention with the benefit of release on bail on these individuals for the presumed perpetration of culpable homicide and bodily harm.[142]

97. On the same June 14, 2001, a specialized prosecutor of the National Human Rights Unit of the Prosecutor General's Office claimed competence to hear the case, because new evidence had been provided that pointed to the perpetration of a crime against humanity.[143]

98. On June 30, 2001, the 122nd Military Criminal Investigation Court, in its capacity as court of first instance, rejected the request of the Prosecutor's Office, refusing to forward the proceedings on competence, leaving the positive dispute on competences in a state of limbo.[144]

99. On October 18, 2001, the Disciplinary Jurisdictional Chamber of the Superior Council of the Judicature declared that competence in the instant case corresponded to military criminal justice.[145] Alba Janeth García Guevara filed an application for *amparo* against the decision of the Superior Council of the Judicature.

100. On November 27, 2001, the 30th Criminal Court of the Bogotá Circuit decided to grant the *amparo* and annul the ruling of the Superior Council of the Judicature. On February 12, 2002, the Superior Court of the Judicial District of Bogotá heard an appeal and decided to annul the first instance ruling and deny the *amparo*.[146]

101. On October 31, 2002, the First Review Chamber of the Constitutional Court delivered judgment T-932 (2002), in which it revoked the second instance ruling and, instead, confirmed the judgment delivered on November 27, 2001 (*supra* para. 100). It also ordered the Disciplinary Jurisdictional Chamber of the Superior Council of the Judicature to deliver a new judgment within 15 days.[147]

102. On February 6, 2003, the Disciplinary Jurisdictional Chamber of the Superior Council of the Judicature, responding to the requirement of the Constitutional Court, decided the positive dispute on competence in favor of ordinary justice.[148]

103. On February 17, 2003, in response to the constitutional decision the 121st Judge of the Military Criminal Investigation forwarded the case file for the Santo Domingo massacre to the Human Rights Unit of the Prosecutor General's Office.

F.2 Ordinary criminal jurisdiction

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[141] *Cf.* Colombian Military Forces, Air Force, Special Military Criminal Investigation Unit decision of February 9, 2001 (evidence file, tome 17, folios 8697 to 8717; 8671 to 8692).

[142] *Cf.* Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 386 and *ff.*).

[143] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 6, folio 2956; case file digital, folio 303).

[144] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 303).

[145] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 303).

[146] *Cf.* Constitutional Court of Colombia, First Review Chamber, Judgment T-932/02 of October 31, 2002, Reporting Judge: Jaime Araujo Renteria (evidence file, tome 3, folios 813 and 834).

[147] *Cf.* Constitutional Court of Colombia, First Review Chamber, Judgment T-932/02 of October 31, 2002, Reporting Judge: Jaime Araujo Renteria (evidence file, tome 3, folio 813 to 834).

[148] *Cf.* Superior Council of the Judicature, Disciplinary Jurisdictional Chamber, Judgment of February 6, 2003, case file. No. 2001081701, Bogotá, Judge Leonor Perdomo Perdomo (evidence file, tome 17, folio 8824 to 8847).

104. On August 12, 2003, the Prosecutor's Office conducted a test at the Apiay (Meta) Air Base consisting in the launch of a cluster bomb on a road that had the same parameters as the highway that goes through Santo Domingo.[149]

105. On December 19, 2003, the Human Rights Unit of the Prosecutor's Office assessed the merits of the investigation opened against C.R.P, J.J.V., and H.H.A., indicting them as presumed perpetrators of culpable homicide and bodily harm. In addition, the investigator admitted the petition of the civil parties to continue the investigation against other persons presumably responsible and to forward authenticated copies of the investigation in order to investigate the possible perjury committed by the citizen R.V.G.[150]

106. On August 26, 2004, a prosecutor assigned to the Superior Court of Bogotá confirmed the decision charging C.R.P., J.J.V. and H.H.A. with presumed responsibility for culpable homicide and negligent bodily harm as presumed perpetrators.[151] Subsequently, jurisdiction in the case corresponded to the Single Court of the Saravena Circuit, which took it up on October 19, 2004, and set a preparatory hearing for December 16, 2004. The defense counsel for two of the accused requested that the venue for the proceeding be changed to Bogotá and, on February 17, 2005, the Criminal Cassation Chamber of the Supreme Court ordered the venue changed to the criminal courts of the Bogotá Circuit.[152]

107. On October 19, 2004, the trial stage began in the Single Court of the Saravena Circuit (Arauca) and a date was set for the preparatory hearing on December 16, 2004. The defense counsel for the accused requested that the venue for the proceeding be changed, considering that, in the said location, there were insufficient guarantees for a fair trial.[153]

108. On February 17, 2005, that petition was admitted by the Criminal Chamber of the Supreme Court of Justice, which ordered that the trial be held in a criminal court of the Bogotá Circuit.[154] Following the allocation process, the trial corresponded to the 12th Court.[155]

109. On September 21, 2007, the 12th Criminal Court of the Bogotá Circuit delivered a first instance judgment in which it sentenced the Air Force servicemen C.R.P., J.J.V and H.M.H.A. to the main punishment of 72 months' imprisonment and a fine of 270,00 Colombian pesos, together with the ancillary penalty of prohibition from the exercise of public rights and functions during the same period of time as the prison sentence, as guilty of simultaneously committing, with a single act, 17 counts of manslaughter, and 18 counts of negligent bodily harm.[156]

110. The judgment was appealed by several of those convicted and, on January 30, 2009, the Superior Court of Bogotá annulled the decisions adopted after the closure of the evidentiary stage

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149 *Cf.* Judicial inspection procedure conducted at the Colombian Air Force Base in Apiay, by the National Human Rights and International Humanitarian Law Unit, of the Prosecutor General's Office (evidence file, tome 17, folios 8849 to 8853).

150 *Cf.* National Human Rights and International Humanitarian Law Unit, Indictment of December 19, 2003, case file 419 (evidence file, tome 3, folios 836 to 923).

151 *Cf.* Prosecutor delegated to the Superior Court of Bogotá, decision of August 26, 2004 (evidence file, tome 3, folios 925 to 955).

152 *Cf.* Supreme Court of Justice, Criminal Cassation Chamber, Reporting Judge Sigifredo Espinosa Pérez, February 17, 2005 (evidence file, tome 3, folios 957 to 965).

153 *Cf.* Supreme Court of Justice, Criminal Cassation Chamber, Reporting Judge Sigifredo Espinosa Pérez, February 17, 2005 (evidence file, tome 3, folios 957 to 965).

154 *Cf.* Supreme Court of Justice, Criminal Cassation Chamber, Reporting Judge Sigifredo Espinosa Pérez, February 17, 2005 (evidence file, tome 3, folios 957 to 965).

155 *Cf.* Supreme Court of Justice, Criminal Cassation Chamber, Reporting Judge Sigifredo Espinosa Pérez, September 5, 2006 (evidence file, tome 17, folio 8882).

156 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 17, folios 8893 and *ff.*).

on the basis that, during the trial, evidence had come to light that required the indictment to be changed to include wanton disregard for human life.[157]

111. Subsequently, the Prosecutor's Office changed the legal classification and, on September 24, 2009, the 12th Criminal Court of the Bogotá Circuit delivered a new first instance judgment in which it found Captain C.R.P. and Lieutenant J.J.V. guilty of simultaneously committing, with a single act, 17 counts of homicide and 18 counts of bodily harm with wanton disregard for human life, and sentenced them to the principal punishment of 380 months' imprisonment and a fine of 44,000 Colombian pesos, together with the ancillary penalty of prohibition from the exercise of public rights and functions for 10 years, and disqualification from occupying any position in the public administration for five years. The Court also found Technician H.M.H.A. guilty of the same crimes and sentenced him to the principal punishment of 72 months' imprisonment and a fine of 181,000 Colombian pesos, with the ancillary penalty of prohibition from the exercise of public rights and function during the same period as the prison term and disqualification from occupying any position in the public administration for five years.[158]

112. On August 31, 2010, the 29th specialized Prosecutor of the Human Rights Unit ordered the opening of a formal investigation against S.A.G.V. and G.D.L.S., both officials on active service in the Colombian Air Force, deciding to hold a preliminary hearing on their criminal responsibility as co-authors of the simultaneous perpetration of 17 homicides and 18 counts of bodily harm with wanton disregard for human life.[159]

113. On June 15, 2011, the Superior Court of the Bogotá Judicial District, Criminal Chamber, decided the appeals filed against the first instance judgment convicting C.R.P., J.J.V. and H.M.H.A. It acquitted the latter, declared the prescription of the criminal action for the 18 counts of bodily harm of which the first two had been convicted, deciding that the proceedings should cease for these conducts and amended the sentence imposed on the other two Colombian Air Force officers, imposed on the accused 360 months' imprisonment finding them guilty of the simultaneous crimes of which they had been accused.[160] An appeal for cassation against this judgment was filed before the Supreme Court of Justice, and remains pending a decision.[161]

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157 *Cf.* Superior Court of the Bogotá Judicial District, Criminal Chamber, Judgment of June 15, 2011, deciding the appeal filed against the First Instance Judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folio 8416).

158 In addition, the judgment established, with regard to C.R.P. and J.J.V., that the competent authorities be notified to conduct the administrative procedure for absolute separation from the Military Forces under article 111 of Decree 1790 of 2000; declared that the two accused did not merit the alternative of conditional suspension of the punishment or substitution by house arrest, and that it would issue the arrest warrant against them when the judgment was final. With regard to H.M.H.A., it established that he did not merit the alternative of conditional suspension of the punishment, ordered his arrest once the judgment was final and granted him house arrest as a substitute. In addition, the judgment observed that "[…] as, during the proceedings, it was said that this official could be involved in the alteration of a video of the operation, because the videos provided to the Attorney General's Office did not have the audio part, attested copies of the file must be made in order to investigate whether he has committed the offense of procedural fraud." 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 17, folios 8893 and *ff.*). See also, article 111 of Decree 1790 of 2000 "Absolute separation. When an officer or non-commissioned officer of the Military Forces is sentenced to the main punishment of imprisonment by the military or the ordinary criminal justice system, except in the case of a sentence for a culpable offense, or when determined by a disciplinary ruling, he shall be separated absolutely from the Military Forces and may never again belong to them."

159 *Cf.* Newspaper article: *El Espectador*, "*Colonel acusado de bombardeo en Arauca se presentara ante la Fiscalía, Sección Judicial*," July 13, 2011. Visited at: http://www.elespectador.com/noticias/judicial/articulo-284214-Colonel-acusado-de-bombardeo-arauca-se-presentara-fiscalia (Date visited: October 8, 2012). Electronic link cited by the representatives in the pleadings and motions brief (evidence file, tome 1, folio 180).

160 *Cf.* Superior Court of the Bogotá Judicial District, Criminal Chamber, Judgment of June 15, 2011, deciding the appeal filed against the First Instance Judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folios 8414 and *ff.*, and tome 20, folios 10717 and *ff.*).

161 *Cf.* Merits Report (merits file, tome 1, folio 203); Answering brief (merits file, tome 2, folio 663), and Final written arguments of the representatives, (merits file, tome 1, folio 1432).

114. On September 8, 2011, the defense counsel of those convicted filed an application for control of legality against the measure of imprisonment, which was declared unsubstantiated by the Criminal Judge attached to the Saravena Circuit, sitting in Arauca.[162]

115. On October 10, 2011, the Prosecutor General decided to change the assignment of the investigation under file 419 that was being conducted by the 29th Specialized Prosecutor's Office of the National Human Rights Unit.[163] The following day, the head of the National Human Rights and International Humanitarian Law Unit assigned the 22nd Specialized Prosecutor of the Human Rights Unit to conduct the criminal investigation in relation to the Colombian Air Force pilots and colonels, S.G.V., G.D.L.S. and C.A.G.M.[164]

116. On November 2, 2011, the 22nd Prosecutor decided to annul the closure of the investigation decided by a ruling of September 7, 2011, in order to continue it and to rule on the admissibility of the evidence requested by the accused during their respective unsworn statements.[165]

117. On November 18, 2011, the 22nd Prosecutor released Colombian Air Force Colonel S.A.G.M. and Major G.L. because the pertinent time frame had expired.[166]

118. On January 3, 2012, the National Human Rights and International Humanitarian Law Unit decided the appeal for reconsideration of judgment filed against the ruling of December 9, 2011, ordering some evidence requested by the defense counsel, refusing other evidence, and ordering other evidence *ex officio.*[167]

119. Insufficient information was provided to determine whether the State agents sentenced and convicted in second instance have served the sentences imposed on them.

F.3. Disciplinary investigation

120. On December 13, 1998, the National Director of Special Investigations of the Attorney General's Office launched, *ex officio*, a preliminary disciplinary investigation.

121. On June 13, 2000, the Attorney General's Office ordered the opening of an investigation against Captain C.R.P., Lieutenant J.J.V., Flight Technician H.M.H.A. and the Commander of the *Comuneros* 36th Counter-Guerrilla Battalion, National Army Major J.M.G.G.[168]

122. On October 27, 2000, disciplinary charges were brought against C.R.P., J.J.V. and H.M.H.A. Specifically, Captain C.R.P. was charged with launching an explosive cluster device, while being aware of the danger this represented. The Attorney General's Office stated that this conduct constitutes a gross violation of international humanitarian law and wanton disregard for human life.[169] Flight Technician H.M.H.A. was charged with the fact that, at the time of the military operations in the village of Santo Domingo, heeding the order given by the pilot of the said aircraft, he fired a cluster bomb at a pre-selected target, knowing that this was situation within the village

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[162] *Cf.* Criminal Court of the Saravena Circuit sitting in Arauca, Interlocutory decision No. 022-2011 of September 8, 2011 (evidence file, tome 17, folios 9049 to 9056).

[163] *Cf.* Decision No. 0-2706 of October 10, 2011, Prosecutor General's Office (evidence file, tome 17, folios 9058 and 9059).

[164] *Cf.* Decision No. 000229 of October 11, 2011, Prosecutor General's Office (evidence file, tome 17, folios 9061 to 9063).

[165] *Cf.* Decision of November 2, 2011, Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, Case file 419-A (evidence file, tome 17, folios 9061 to 9063).

[166] *Cf.* Decision of November 2, 2011, Prosecutor General's Office, National Human Rights and International Humanitarian Law Unit, Case file 419-A (evidence file, tome 17, folios 9061 to 9063).

[167] *Cf.* The 22nd Special Prosecutor of the UNDH-DIH, decided not to reinstate the decision of December 9, 2011, but to grant the appeal against i (evidence file, tome 20, folios 10485 to 10487).

[168] *Cf.* Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folio 969 to 1034).

[169] *Cf.* Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folio 969 to 1034).

near to where the majority of the inhabitants were assembled. This conduct constituted wanton disregard for human life. [170]

123. On October 2, 2002, the Special Disciplinary Commission, created by the Attorney General, delivered a first instance judgment in which it penalized Captain C.R.P. and Flight Technician H.M.H.A. with suspension from duty for three months and acquitted Major J.M.G.G. and Lieutenant J.J.V.[171] The men who had been punished appealed the ruling and, on December 19, 2002, the Disciplinary Chamber of the Attorney General's Office upheld the first instance ruling.[172]

G. Contentious administrative proceeding

124. On September 25, 2000, Alejandro Álvarez Pabón, in representation of the families of 16 of those who were killed[173] and 13 of those who were injured,[174] filed suit for direct reparation against the Nation (Ministry of Defense – Colombian Air Force) for the deaths and injuries caused by the launch of a cluster bomb on the civilian population of Santo Domingo from a Colombian Air Force helicopter, and for the looting and destruction of the establishment "*El Oasis*" owned by Mario Galvis and Teresa Mujica; the looting and destruction of the establishment "Santo Domingo pharmacy and miscellaneous store" owned by María Panqueva; the destruction of a Chevrolet vehicle, license plate UR-2408, owned by Víctor Julio Palomino; the looting of the establishment dedicated to the sale of clothes, shoes and miscellaneous goods owned by Henry Ferney Pastrana Vargas, and the fire and total destruction of a gasoline service station, restaurant and hostel owned by María Antonia Rojas.[175]

125. On May 20, 2004, the Contentious Administrative Court of Arauca found the State responsible for having failed in its duty to serve as a result of the events of December 13, 1998, in Santo Domingo, in favor of 23 family groups (joint litigators) and ordered that they be compensated. Both parties appealed the ruling and, following a conciliation hearing in which no agreement was reached, the parties reached an agreement on November 24, 2006, which was

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[170] *Cf.* Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folio 969 to 1034). Major J.M.G.G. was accused, under a disciplinary reprimand, with omissive behavior, being guilty of not exercising his authority in relation to the troops located in the urban area of the village of Santo Domingo between December 16 and 22, 1998, a lapse during which he had negligently allowed the soldiers to enter the homes arbitrarily taking advantage of the fact that the inhabitants had displaced to other villages owing to the bombing of December 13, 1998. Lastly, Lieutenant J.J.V. was accused of omissive behavior because, fully aware of what had happened, he concealed the potentially irregular activities of his co-crew members (evidence file, tome 3, folios 969 to 1034).

[171] *Cf.* Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folios 969 to 1034).

[172] *Cf.* Disciplinary Chamber of the Attorney General's Office, case file 161-01640, December 19, 2002 (evidence file, tome 2, folios 609 to 641). Specifically the disciplinary indictment indicated that: "since the aircraft of the Colombian Air Force were those that supported the troops on the ground by bombardments, it was public servants who activated the explosive device, in evident disregard of international humanitarian law; specifically ignoring the principle of distinction established in Articles 48 of Protocol I and Article 13 of Protocol II of 1977 and Article 3 common to the four Geneva Conventions of 12 August 1949, which establish that the parties in conflict shall make a distinction at all times between the civilian population and the combatants, and between civilian property and military objectives, and shall address their operations only against military objectives; thus we must conclude that we are in the presence of a conduct that must be disciplined. It should be clarified that, based on the evidence, the facts were presented as the occurrence of an isolated and unfortunate conduct of a crew that in no way involved the Armed Forces as such."

[173] Jaime Castro Bello, Luis Carlos Neite Méndez, Egna Margarita Bello, Katherine (o Catherine) Cárdenas Tilano, Oscar Esneider Vanegas Tullbila, Geovani Hernández Becerra, Levis Hernando Martínez Carreña, Teresa Mojica Hernández de Galvis, Edilma Leal Pacheco, Salomón Neite, Marra Yolanda Ángel, Pablo Suárez Daza, Carmen Antonio Díaz Coba, Nancy Ávila Castillo (or Abaunza), Arnulfo Arciniegas Velandia (or Calvo) and Adolfo Carrillo. Communication presented by Alejandro Álvarez Pavón dated February 6, 2009 (evidence file, tome 7, folios 3053 and *ff.*).

[174] Marcos Neite González, Erinson Olimpo Cárdenas, Hilda Yuraime Barranco, Nehalí Neite, Alba Yaneth Garcfa, Mllciades Bonilla Ostos, Ludwing Vanegas, Xiomara García Guevara, Mario Galvis, Fredy Managa VIIlamizar (or Fredy Villamizar Monogal. Mónica Bello Tilano, Amalio Neite González, Maria Panqueva and Fernando Vanegas. Communication presented by Alejandro Álvarez Pavón dated February 6, 2009 (evidence file, tome 7, folios 3053 and *ff.*, and tome 3, folios 1036 and *ff.*).

[175] *Cf.* Communication presented by Alejandro Álvarez Pavón dated February 6, 2009 (evidence file, tome 7, folios 3053 and *ff.*, and tome 3, folios 1036 and *ff.*).

ratified at a hearing on November 8, 2007.[176] On December 13, 2007, Section Three of the Council of State approved the conciliation reached between the Nation and 19 of the 23 optional joint parties and declared the proceedings concluded in their regard; it also failed to approve the agreement with regard to the other four and ordered the procedure to continue.[177] On November 29, 2008, Section Three of the Council of State declared the Nation (Ministry of Defense – Colombian Air Force) financially liable for the damage caused to the four joint parties regarding whom the proceeding had continued for the events of December 13, 1998.[178]

126. By resolutions 0979 of March 18, 2009,[179] and 1560 of April 27, 2009,[180] the Ministry of Defense paid the representative of the presumed victims a total of five thousand seven hundred and fifty-eight million, seven hundred and fifty-nine thousand and nineteen pesos and twenty cents ($5,758,759,019.20) in reparation and compensation for the events of Santo Domingo[181] to 23

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176 *Cf.* Record of November 8, 2007, Third Section, Council of State, Mario Galvis Gelves *et al.,* proceedings No. 28259 (00-0034801) (evidence file, tome 3, folios 1044 and 1045).

177 *Cf.* In a decision of December 13, 2007, the Third Section of the Council of State approved the judicial conciliation between the parties, in relation to proceedings 2003-348, 2003-350, 2003-352, 2003-353, 2003-355, 2003-357, 2003-358, 2003-361, 2003-363, 2003-364, 2003-365, 2003-366, 2003-367, 2003-1265 and 2003-1267; and ordered the termination of the proceedings between the Nation and the following discretionary co-litigants: Mario Galvis Gelves, Óscar Andrés Galvis Mujica, John Mario Galvis Mujica, Luis Alberto Galvis Mujica, Nelson Enrique Galvis Mujica, Robert Yamid Galvis Mujica, Albeiro Galvis Mujica, Nelcy Moreno Lizarazo, Nidia Mayerly Carrillo Moreno, Leidy Liliana Carrillo Moreno, Deivis Daniela Moreno Lizarazo, Tulia Mora de Carrillo, Luis Enrique Carrillo Mora, Irma Nelly Carrillo Mora, Marleny Carrillo Mora, Edgar Carrillo Mora, Nelcy Carrillo Mora, Ana Mirián Durán Mora, Rosalbina Durán Mora, Graciela Durán Mora viuda de Monterrey, Marcos Neite González, Leyda Shirley Neite Méndez, Vilma Yadira Neite Méndez, Marcos Aurelio Neite Méndez, Carmen Edilia González Ravelo, Neftalí Neite González, Neila Neite González, Salomón Neite González, Amalio Neite González, Elizabeth Neite González, Jorge Henry Vanegas Ortiz, Myriam Soreira Tulivila Macualo, Jorge Mario Vanegas Tulivila, Yaritza Lisbeth Vanegas Tulivila, Edwin Fernando Vanegas Tulivila, Ludwing Vanegas Muñoz, Fredy Yovany Monoga Villamizar, María Elida Becerra Rubio, José Rafael Hernández Mujica, Diana Carolina Hernández Becerra, José Luis Hernández Becerra, Érica Yusdey Hernández Becerra, Luz Helena Hernández Becerra, Bertha Hernández Becerra, Emérita Hernández Becerra, Milciades Bonilla Ostos, Nancy Chaquira Bonilla Ávila, Jorge Eliécer Ávila, Carmen Elisa Abaunza Castillo, Sandy Yomaira Ávila Castillo, Pedro Ávila Castillo, Gladis Cecilia Ávila Castillo, Omar Ávila Castillo, Tiberio Barranco Téllez, Eliberta Bastilla, Yilmer Orledy Barranco Bastilla, Hilda Yuraine Barranco Bastilla, Edwin Fabián Barranco Bastilla, Anyi Marieth Barranco Bastilla, Gleidys Xiomara García Guevara, Alba Janeth García Guevara, Olimpo Cárdenas Castañeda, Margarita Tilano Yánez, Erinzon Olimpo Cárdenas Tilano, Wilmer Yesid Cárdenas Tilano, Orlando Castro Londoño, Inés Yurelli Bello Tilano, Angie Camila Castro Bello, Mónica Alicia Bello Tilano, Camilo Andrés Quintana Bello, Rule Constanza Bello Tilano, Deicy Damaris Cedano, Jeinny Damaris Cedano, Pablo Gesnober Cedano, Ascensión Daza Galindo, Eliud Suárez Daza, Eliécer Suárez Daza, José Alirio Suárez Daza, Wilson Suárez Daza, Nilsa Jesús Díaz Herrera, José David Rincón Díaz, Dionisio Arciniégas Velandia, Florinda Calvo Rey, Jorge Eliécer Arciniégas Calvo, Diomedes Arciniégas Calvo, Norberto Arciniégas Calvo, Olinto Arciniégas Calvo, Argemiro Arciniégas Calvo, Erlinda Arciniégas Calvo, Gladys Arciniégas Calvo, Omaira Arciniégas Calvo, Orlando Arciniégas Calvo, Luz Dary Abaunza Castillo and Yexi Coromoto Arciniégas Rangel. In addition, it did not approve the conciliation between the Nation and the following discretionary co-litigants (proceedings 2003-351, 2003-354, 2003-356 and 2003-359): Carmen Edilia González Ravelo, Neftalí Neite González, Neila Neite González, Salomón Neite González, Amalio Neite González, Elizabeth Neite González, Marcos Neite González, Romelia Neite de López, Nerys Duarte Cárdenas, Davinson Duarte Cárdenas, Andersson Duarte Cárdenas, Rafael Díaz Ramírez, Clemencia Cobos, Ana Lucía Díaz Cobos, Sonia Díaz Cobos, Giovanni Díaz Cobos, Leonel Díaz Cobos, Luz Helena Díaz Cobos, Norberto Leal, Benilda Pacheco de Leal, Rubiela Leal Pacheco, Edwin Leal Pacheco, Frady Alexi Leal Pacheco, Norelis Leal Pacheco, Lucero Talero Sánchez, Luis Eduardo Martínez Talero, Yésica Martínez Talero, Doris Adriana Martínez Talero, Excelino Martínez Rodríguez, Teodora Carreño Alarcón, Pedro Virgilio Martínez Carreño, José Vicente Martínez Carreño, Manuel Alfonso Martínez Carreño, Claudia Exelina Martínez Carreño, Ana Fidelia Martínez Carreño and María Elena Carreño and ordered the continuation of the proceeding in relation to these individuals.

178 *Cf.* Judgment of November 19, 2008, Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No 07001-23-31-0002000-0348-01, Councilor Rapporteur: Ramiro Saavedra Becerra (evidence file, tome 3, folios 1046 to 1127).

179 *Cf.* Decision 0979 of March 18, 2009, Ministry of National Defense, Legal Affairs Directorate, complying with the conciliatory agreement in favor of Mario Galvis Gelves *et al.* (evidence file, tome 20, folios 10690 to 10707).

180 *Cf.* Decision 1560 of April 27, 2009, Ministry of National Defense, Legal Affairs Directorate, complying with a Judgment in favor of Mario Gelves *et al.*, Carmen Edilla Gonzalez Revelo *et al.* (evidence file, tome 20, folios 10666 to 10672).

181 *Cf.* Decision 0979 of 2009, March 18, 2009, Ministry of National Defense, Legal Affairs Directorate (evidence file, tome 3, folios 1129 to 1146), and Decision 1560 of April 27, 2009 Ministry of National Defense, Legal Affairs Directorate, complying with a Judgment in favor of Mario Gelves *et al.*, Carmen Edilla Gonzalez Revelo *et al.* (evidence file, tome 3, folios 1147 to 1155).

family groups composed of 111 persons, including the families of 16 of those who died, as well as 13 of those who were injured, and their next of kin.[182]

VII
MERITS

127. Based on the disagreement introduced by the State in this case, the Court finds it pertinent, first, to make an analysis in relation to the alleged violation of Articles 8 and 25 of the Convention, regarding which the State proposed an "acknowledgement of responsibility," after which it will analyze the other alleged violations to the rights to life, to personal integrity, to special protection measures for children, to freedom of movement and residence, to honor and dignity, and to property, as well as the obligation to adopt domestic legal provisions.

VII-1
RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION

A. Arguments of the Commission and allegations of the parties

A.1. State act called "acknowledgement of responsibility"

128. Regarding the affirmations about what occurred in the instant case, the State proposed an "acknowledgement of responsibility" as follows:

> […] the existence of two decision [of a criminal court and a higher criminal court] that, on the one hand, sentence and convict the pilots of the Colombian Air Force aircraft for the death and injury of several villagers of Santo Domingo and, on the other hand, a judgment of a criminal court convicting alias *Grannobles* for the same deaths and injuries of the villagers of Santo Domingo, does not provide certainty or effectiveness to the victims about the truth of the incident that occurred in Santo Domingo.
>
> In this regard, the State partially acknowledges its responsibility in relation to the rights recognized in Articles 8 and 25 [of the Convention], [not] as the version of the facts and the claims have been presented by the Commission, [but rather] in the precise terms set out below:
>
> (i) The 2011 criminal proceedings in first and second instance included serious evidentiary shortcomings that have resulted in the fact that, currently, there is no single final judgment that determines the actual perpetrators of the fateful events. […] There is another final domestic decision that finds alias *Grannobles*, FARC leader, guilty of these acts. The said shortcomings have meant that, currently, a special appeal for cassation has been filed before the Supreme Court of Justice – the institution responsible for deciding uncertainties about the authorship of the facts. […] In other words, there are two contradictory and diametrically opposed judgments.
>
> (ii) The main evidentiary shortcomings [of the criminal judgments in first and second instance] that distorted the truth of the facts, can be resumed [as follows]:
>
> 1. […] The criminal courts omitted to analyze each piece of evidence individually, to then examine them as a whole based on the rules of sound judicial discretion;
> 2. The judicial ruling in second instance contains an inappropriate assessment of the evidence;
> 3. Absence of a chain of custody for the probative elements collected in Santo Domingo, [… in the case of the] removal of the bodies [which was not carried out] by the competent authorities, but rather they were taken to Tame unduly by the inhabitants of the village; [… and] in the case of the shrapnel and the two caliber .50 projectiles handed over by María Panqueva during the judicial inspection procedure. [This] gives rise to serious doubts concerning the certainty of the circumstances of means, time and place where the evidence was found;
> 4. There were serious procedural irregularities in the collection and assessment of probative elements;
> 5. The conclusions of the FBI report of June 10, 2000, used as evidence in the domestic criminal proceedings are based on false premises. The evidence forwarded had previously been modified;

[182] *Cf.* Decision 1560 of April 27, 2009, Ministry of National Defense, Legal Affairs Directorate, complying with a Judgment in favor of Mario Gelves *et al.*, Carmen Edilla Gonzalez Revelo *et al.* (evidence file, tome 3, folios 1147 to 1155).

6. Inappropriate assessment of video 14 of the Skymaster, a fundamental video based on which the crew of the UHIH helicopter were convicted and which was misinterpreted by the first and second instance criminal judges.

7. Inappropriate assessment of the destructive force and range of the AN-M1A2 bomb. The criminal judgments even lack technical support to establish the real range of the bomb, because they based their ruling on information contained on the Wikipedia web page.

Based on the above, the Colombian State partially acknowledges its responsibility for the violation of the right to the truth and access to the administration of justice. It considers that, at a cost to the truth, the victims should not have to support the evidentiary shortcomings incurred throughout the domestic criminal proceedings.

129. The State indicated that it only acknowledged responsibility with regard to some of the presumed victims[183] and, "in any case, insists that this acknowledgement of responsibility does not imply acknowledging or accepting the facts presented by the Commission and by the victims."[184] It maintained that it did not accept responsibility during the proceedings before the Commission, because, on that occasion, it had merely provided information on the procedural status of the judicial investigations without it being possible to understand that it accepted some of the facts described by the petitioners or that it was acknowledging any type of responsibility. Thus, the State considered that the version of the facts presented in its answer must be assessed integrally by the Court and that, in the instant case, the mechanism of estoppel has not been constituted.

130. Regarding the preceding claim of the State, the representatives argued that the State had violated the estoppel principle, because throughout the proceedings before the Inter-American Commission it had maintained a position focused on demonstrating that its three domestic remedies were being conducted in accordance with national and international standards, a position that changed radically in its answering brief. In addition, they argued that the decision of the Arauca Court of January 31, 2011, is not a supervening fact, because the State did not advise the Commission at the appropriate time, and despite this, it is now using it extemporaneously to change the factual framework of the litigation and to deny its international responsibility, which is contrary to the principles of good faith and estoppel. In addition, the representatives indicated that, the proceedings in which that ruling was delivered resulted from a different criminal investigation,[185] in which the death of the civilians in the Santo Domingo massacre was not investigated and, despite this, the ruling also found a member of the guerrilla guilty of the Santo Domingo massacre and of the attempted murder of Alba Janeth García Guevara (one of the presumed victims in this case).[186] On this basis, they argued that the said act of acknowledgement

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183 "The Colombian State acknowledges its responsibility for the violation of Articles 8 and 25 of the American Convention, with regard to the victims referred to in Annex I of Report 61/11 of the Inter-American Commission on Human Rights, except in the case of Rusmira Daza Rojas, Maribel Daza Rojas, Jose Del Carmen Lizcano, Abraham Puentes Pérez, Matilde Gutiérrez Arciniegas, Albeiro Díaz Herrera, Luis Felipe Durán Mora, Luz Dary Téllez Durán, Yamilet Téllez Durán, Luz Dary Castillo, Wilmer Téllez Durán, Nelly Guerrero Galvis, Luis Enrique Parada Ropero, Andersson Duarte Cárdenas, Nerys Duarte Cárdenas, Davinson Duarte Cardenas, Lucero Talero Sánchez, and Maria Helena Carreña, regarding whom it contests their condition as victims of the matters in question." Answering brief (merits file, tome 2, folio 379).

184 In particular, it indicated that it does not acknowledge, as the Commission alleged, that there was a failure to investigate and prosecute the masterminds in relation to the senior military commanders; that the pecuniary sentence against the State in the contentious-administrative jurisdiction was only a partial reparation, or that access to justice has been violated owing to the infringement of reasonable time. In addition, it argued that it had not violated the right to an ordinary judge, because although, at the start of the investigation, competence was assigned to the military jurisdiction, the Constitutional Court decided the conflict of competences in a 2002 judgment in favor of the ordinary justice system. It added that the military jurisdiction never acted in a biased manner and complied with due process of law. Lastly, the State argued that the proceedings lasted a reasonable time, based on the complexity of the case owing to various factors: the conflict of competences between the military the ordinary jurisdiction; the extensive probative measures carried out; the difficulty to perform the expert appraisals; the large number of victims; the delicate and serious nature of the matters decided; the appeals and interlocutory proceedings filed by the parties involved; the diametrically opposed criminal judgments even though the same events were investigated, and the confusion surrounding the massacre that has made it difficult to clarify the truth. In addition, it is not true that some lines of investigation were not explored.

185 They argued that this was being conducted against members of the FARC in relation to the death and injuries to members of the Army that occurred during combats that took place between December 12 and 15, 1998, near the village. They indicated that, in that other investigation, "alias Grannobles" had been accused only for these nine murders and 16 attempted murders, in conjunction with rebellion and terrorism.

186 Therefore, the representatives considered that the actions of the Arauca judge, in addition to disregarding the principle of coherence, was opposed to the procedural truth produced in the other criminal action that, with full guarantees,

by the State does not accord with the violations that they and the Commission have alleged and, to the contrary, violates the right to the truth because the said fact that it presents as the grounds for the acknowledgement is not supervening, is not in keeping with the factual framework of the case, and ignores the rights of the victims.[187] The representatives argued that this ruling, as well as the notorious errors made by the Prosecutor's Office in the indictment, "again created a factor that violates Articles 8 and 25 of the American Convention to the detriment of the victims"; consequently, because there is only an extraordinary and residual possibility that the Colombian Constitutional Court will revise the *amparo* rulings, they asked the Court to "examine the merits of the matter in relation to the grave consequences of this action on the treaty-based rights of the victims."

131. Meanwhile, the Commission argued that the text provided by the State did not constitute even a partial acknowledgement of responsibility. It observed that the State itself had indicated in its answer that it did not acknowledge its responsibility in relation to the claims of the representatives, or with regard to the facts and violations established in its Merits Report, in which it analyzed matters other than those which the State had referred to as "evidentiary shortcomings" in the criminal proceedings in first and second instance that culminated in the guilty verdicts. Thus, it observed that what the State called an acknowledgement constituted, precisely, the support for its dispute concerning the factual and legal framework of the Merits Report. It observed that, to the contrary, during the merits stage of the case before the Commission, the State had indicated that its domestic proceedings, including the criminal proceeding that it is now criticizing, constituted a clear and in-depth investigation of the facts and that these criminal proceedings were conducted in accordance with national and international standards, complying with its obligations as regards the investigation and determination of those responsible, all of which it maintained even after the approval of the Merits Report, at the stage prior to the forwarding of the case to the Court and after the judgment that found a member of the FARC guilty of these facts. In conclusion, the Commission considered that the State's text should not be analyzed under the legal concept of acknowledgement of international responsibility, but rather in light of the estoppel principle.

A.2 Regarding the domestic investigations and proceedings

132. The Commission and the representatives considered that the State had violated the rights to judicial guarantees and judicial protection recognized in Articles 8[188] and 25[189] in relation to Article 1(1) of the American Convention.

133. The Commission observed that criminal proceedings were held in the military criminal, ordinary criminal, disciplinary and contentious administrative jurisdictions. Regarding the investigation by ordinary criminal justice, it observed that, in September 2009, the 12th Criminal Court delivered a first instance judgment against three officers of the Colombian Air Force, the crew of the aircraft that launched the cluster device, considering them the perpetrators of the facts. Despite this, the Commission considered that "the responsibilities had not been fully clarified of those who oversaw the planning and execution of the bombing," which was carried out with the authorization of senior military commanders. Regarding the disciplinary proceedings, the

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had investigated and tried the facts of this case; consequently, it had harmed the right to due process of law and the access to justice of the presumed victims, who were unable to intervene in that proceeding, so that they asked the Court to exclude the said ruling of January 31, 2011, from the analysis of the merits of the instant case.

187 The representatives also asked the Court to consider as supervening facts, an application for *amparo* that presumed victims filed against the said judgment of January 31, 2011, as well as a decision of March 28, 2012, of the Superior Court of the Judicial District of Arauca declaring it admissible, and another decision in second instance of the Supreme Court of Justice revoking this.

188 Article 8(1) of the American Convention establishes: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

189 Article 25(1) of the American Convention establishes: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

Commission merely observed the results of the actions of the Attorney General's Office, which penalized two of the officers and acquitted the other. Lastly, regarding the contentious administrative proceedings, the Commission observed that, five years after the judgment had been handed down, in 2009, the State compensated the next of kin of 16 of those who were killed and 13 of those who were injured and their families, and assessed this as an effort by the State that constitutes partial reparation of the damage to some families, which, however, had failed to have an impact on the absence of investigation and punishment of the facts.

134. Consequently, the Commission recommended to the State, *inter alia*, that it: conduct an impartial and exhaustive investigation within a reasonable time to prosecute and punish all those responsible for the facts; investigate the connections between State agents and the extractive company that operates in the area where the facts occurred, and "make adequate reparation," both pecuniary and non-pecuniary for the violations declared, including the establishment and dissemination of the truth about the events.

135. For their part, the representatives stated, in relation to the investigations and the criminal proceedings, that the Colombian judicial apparatus has not investigated all the facts and unlawful conducts effectively and within a reasonable time, and it has not prosecuted and punished all those responsible for the massacre. They criticized the fact that the investigation was initially conducted under the military criminal jurisdiction, which they categorized as an attempt to achieve impunity in this case, in violation of the right to an ordinary judge, recognized in Article 8(1) of the Convention. Furthermore, they argued that, even though strong evidence exists that establishes the intellectual participation of senior military commanders in the planning of the operation, as well as in the subsequent cover-up, only two of the physical perpetrators have been tried, who are not in prison and whose sentence is not yet final. In addition, they considered it necessary that the courts establish the participation of private security agents acting to supervise and protect OXY property, who acted as State agents, as well as the special financial and arms collaboration (with the Skymaster plane and the MI-17 helicopter) between this multinational corporation and the 18th Brigade, to the detriment of the victims. In addition, they argued that the absence of significant progress during the proceedings had led to the prescription of the criminal action in relation to the harm to property and the injuries caused to the presumed victims, while the investigation into those who were injured had been conducted for the crime of bodily harm and not for attempted murder. In addition, the machine gun attack against the villagers who tried to help those who were injured has not been investigated, and neither has the forced displacement, conducts that were not defined as crimes in the criminal legislation at the time of the events, nor had the crimes that could have been committed by the supposed rehabilitated members of the FARC who committed perjury during the criminal investigation.

136. Regarding the disciplinary proceedings, the representatives argued that even though active measures were taken to obtain evidence during the preliminary stages, the disciplinary entity did not make a comprehensive analysis of Operation "*Relámpago II*" which would have allowed establishing the disciplinary responsibility of officials who took part in the planning of the bombing, and failed to investigate the conduct of those who allowed or ordered private agents to exercise public functions exclusive to the Colombian Armed Forces. In addition, they argued that the punishment imposed of three months, without the dismissal of those responsible, was disproportionate.

137. In relation to the contentious administrative proceedings, the representatives argued that conducts exist that were not examined and/or acknowledged by the courts, including the damage to property, the forced displacement of the whole village, and the collective and social damage caused by the massacre. In addition, they argued that the physical damage to the survivors who had permanent aftereffects, and the consequences on their employment and life projects, were not assessed adequately.

138. For its part, the State indicated that the Commission's assertions were not in keeping with the reality, because there is a ruling of the Colombia courts of January 31, 2011: of the Criminal Court of the Arauca Specialized Circuit, sentencing and convicting a member of the FARC guerrilla ("alias *Grannobles*") finding him responsible for the events of Santo Domingo. This, together with other evidence, shows that the Colombian Air Force did not drop a bomb in the urban center of the

village and that the deaths that occurred were caused by a bomb installed by the FARC guerrilla in a truck that was in the main street of the village. In this regard, the State argued that the right to the truth has not been violated by not having investigated the supposed masterminds, given that the above-mentioned final criminal judgment exists convicting the said FARC leader for the facts and, in addition, that, under the rules and protocols of the chain of command the Air Force Commander's authorization was not required to execute the operation in which the AN-M1A2 explosive device was launched, because this was classified as a "Charlie mission." Furthermore, it indicated that State agents had not obstructed justice, because the testimony of members of the Armed Forces about the facts, far from being an instrument of impunity, had contributed to clarify the truth and was part of the exercise of its right of defense. In addition, it argued that several judicial proceedings had been initiated, and were still underway owing to their complexity, including one opened since 2011 in which members of the Armed Forces were being investigated for the presumed machine gun attack against the civilian population.

139. Regarding the military criminal jurisdiction, the State argued that, even though the case was initially prosecuted under this jurisdiction, the latter was impartial and the case had finally been investigated under the ordinary justice system.

140. The State also indicated that it had made "integral reparation" to the victims in proceedings before the contentious administrative jurisdiction in which compensation corresponding to the pecuniary and non-pecuniary damage caused had been claimed.[190] It argued that all the damage caused by the legitimate operation by the Armed Forces had been repaired, under the premise of "special damage," to those persons who proved their status as victims and the damage caused, acceding partially to the petitioners' claims for compensation. Owing to the conciliation agreement approved by the Council of State, reparation had been made to 19 of the 23 families who filed claims.[191] The State asked that, despite the foregoing, should the Court determine the responsibility of the State, when establishing reparations, the Court take into account the compensation awarded under domestic law, so that the amounts previously allocated could be deducted from the sums established in the judgment.

B. Considerations of the Court

B.1. Ruling on the purpose of this case and the State's act called "acknowledgement of responsibility"

141. In the proceedings before the Court in the instant case, the State has substantially altered its arguments in relation to those maintained before the Commission, as regard how the facts of the case occurred and the corresponding actions of its organs for the administration of justice, founded mainly on a factual hypothesis based to a great extent on a judgment delivered by the Criminal Court of the Arauca Specialized Circuit on January 31, 2011. On the basis of this ruling, the State has also presented a text that it calls an "acknowledgement of responsibility" in relation to the alleged violation of Articles 8(1) and 25 of the Convention. The Commission and the representatives argue that this fact exceeds the factual framework of the case; that the State has incurred in a violation of the estoppel principle, and that the text is not an acknowledgement and is not valid. It corresponds to the Court to recall the purpose of the responsibility of States Parties under the Convention in order to assess the State's position, define the purpose of this case, and make the corresponding analysis of the rights to judicial guarantees and judicial protection.

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190 The State asserted that, "on this point, it should be clarified that those affected did not claim recognition of the damage that could have been caused to affective life, or the adoption of measures of satisfaction and guarantees of non-repetition; consequently, the conciliation agreement did not refer to these, because, under domestic law, the conciliation cannot include requests that were not made by the applicants in the specific case."

191 The State indicated that the Third Section of the Council had approved the conciliation with regard to 19 of the 23 applications that had been joindered and that the denial of four of them was due to the fact that the interested parties had not provided the necessary evidence to authenticate the injuries suffered or their relationship to the victims who lost their life, so that the decision in these four cases remains pending.

142. The State's responsibility under the Convention can only be required at the international level after the State has had the opportunity to declare the violation and to repair the damage caused by its own means. This is based on the principle of complementarity (subsidiarity), that crosscuts the inter-American human rights system, which – as stated in the Preamble to the American Convention – "reinforce[es] or complement[s] the protection provided by the domestic law of the American States." Thus, the State "is the main guarantor of the human rights of the individual, so that, if an act that violates the said rights occurs, it is the State itself that has the obligation to decide the matter at the domestic level and, [as appropriate,] to make reparation, before having to respond before international instances, such as the inter-American system, which derives from the subsidiary nature of the international proceedings in relation to the national systems that guarantee human rights."[192] These ideas have also been incorporated in recent case law based on the opinion that all the authorities and organs of a State Party to the Convention have the obligation to ensure "control of conformity with the Convention."[193]

143. The above means that a dynamic and complementary control of the States' treaty-based obligations to respect and ensure human rights has been established between the domestic authorities (who have the primary obligation) and the international instance (complementarily), so that their decision criteria can be established and harmonized. Thus, the Court's case law includes cases in which decisions of domestic courts have been examined in order to approach and to found the violation of the Convention in the specific case.[194] In other cases, it has been recognized that, in keeping with their international obligations, the domestic organs, instances and courts have adopted adequate measure to redress the situation that gave rise to the case,[195] and have settled

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[192] *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006, para. 66.

[193] When a State is a party to an international treaty such as the American Convention, all its organs, including its judges, are subject to this treaty, which obliges them to ensure that the effects of the provisions of the Convention are not lessened by the application of norms that are contrary to its object and purpose; thus, the judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* control of conformity between domestic laws and the American Convention; evidently, within the framework of their respective competences and the corresponding procedural regulations and, in this task, they must take into account not only the treaty, but also the interpretation that the Inter-American Court, ultimate interpreter of the American Convention, has made of it. *Cf. Case of Almonacid Arellano et al. v. Chile*. *Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 176, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 225. See also, *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011 Series C No. 221, para. 193.

[194] In the *case of the Mapiripán Massacre v. Colombia*, when interpreting the right not to be forcibly displaced under Articles 4, 5 and 22 of the Convention, the Court based itself extensively on the judgment of the Constitutional Court of Colombia T/025-04. *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*, para. 167 and *ff.*

[195] In the *case of La Cantuta v. Peru,* the Court analyzed whether the self-amnesty laws declared incompatible with the Convention in a previous case (*Barrios Altos*) continued to have effects at the domestic level. After observing that the decisions of various State organs and rulings of the Peruvian Constitutional Court were in keeping with its preceding ruling, the Court found that the State had not continued to fail to comply with Article 2 of the Convention. *Cf. Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162.

the alleged violation,[196] ordered reasonable reparations,[197] or exercised an adequate control of conformity with the Convention.[198]

144. In other words, although the system has two organs "competent to hear matters related to compliance with the commitments made by the States Parties to the Convention,"[199] the Court can only "hear a case" following "the exhaustion of the procedure established in Articles 48 to 50" of the said instrument: that is the procedure of individual petitions before the Inter-American Commission. Thus, it is only if a case has not been settled at the domestic level, as corresponds in the first place to any State Party to the Convention in effective exercise of control of conformity with the Convention, that the case can be lodged before the system; in which case, it must be decided before the Commission and only if the latter's recommendations have not been met can the case reach the Court. In this way, the logical and adequate functioning of the inter-American human rights system implies that, as a "system," the parties must present their positions and information on the facts coherently and in keeping with the principles of good faith and legal certainty, in order to permit an adequate substantiation of the cases for the other parties and the inter-American organs. The position assumed by the State in the proceedings before the Commission also determines, to a great extent, the position of the presumed victims, their next of kin or their representatives, which then affects the course of the proceedings.[200]

145. It is precisely based on this need for coherence in the presentation of the facts and arguments that, once the Commission has submitted a contentious case to the Court, the Merits Report (and previously the application) determines the factual framework of the proceedings[201] and

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196 In the *case of Cepeda Vargas v. Colombia*, the Commission had asked the Court to declare that the State was responsible for the violation of the right to protection of honor and dignity of the next of kin, because declarations made against them by senior State officials constituted "acts of stigmatization" that affected them "and the memory of the Senator." The alleged violation of Article 11 was also based on a specific act against the Senator's son: a publicity message issued as part of the electoral publicity of the re-election campaign of the then candidate for the Presidency of the Republic. The Court observed that the Constitutional Court of Colombia itself had delivered a judgment in which it recognized that the dissemination of certain messages in the mass media harmed the good name and honor of Iván Cepeda Castro, as a son of one of the victims of the political violence in the country and that the said right had also been violated to the detriment of his next of kin. The Court declared that it "had analyzed the said judgment of the Constitutional Court, in the sense that it declared the [said] violation […] owing to the above-mentioned publicity message and that it had also established pertinent reparations at the domestic level." *Case of Cepeda Vargas v. Colombia,* paras. 203 to 210.

197 In the same *case of Cepeda Vargas v. Colombia*, with regard to reparations and the rulings in the domestic contentious-administrative jurisdiction. *Case of Cepeda Vargas v. Colombia,* paras. 211 and *ff.*

198 Thus, in the *case of Gelman v. Uruguay*, the Court considered that the Uruguayan Supreme Court of Justice had exercised, in another case, an adequate control of conformity with the Convention in relation to the Amnesty Law, by declaring it unconstitutional. *Case of Gelman v. Uruguay,* para. 239.

199 Article 33 of the American Convention.

200 Similarly, in the *case of Acevedo Jaramillo et al. v. Peru,* the Court considered: 174. First, the Court finds it necessary to emphasize that the processing of each individual complaint seeking a jurisdictional decision by the Court requires the protection system established by the American Convention to work as an institutional whole. Before a contentious case can be brought before the Court alleging human rights violations by a State Party who has recognized the Court's contentious jurisdiction, a proceeding must be instituted before the Commission, which starts by filing a petition with the Commission. The proceeding before the Commission provides for safeguards both for the respondent governement and for the alleged victims, their next of kin or their representatives, among which safeguards it is worth underscoring those concerning the requirements for the admissiblity of the petition and those concerning the principles of adversary procedure, procedural equality and juridical certainty. It is during the proceeding before the Commission when the respondent State initially submits the information, allegations and evidence it deems relevant to the petition, and the evidence rendered in adversarial procedure may later be put on the record of the case before the Court. The position taken up by the State in the proceeding before the Commission also determines to a large extent the position of the alleged victims, their next of kin or their representatives, which in turn affects the course of the proceeding […]." *Case of Acevedo Jaramillo et al. v. Peru*. *Preliminary objections, merits, reparations and costs*, Judgment of February 7, 2006, Series C No. 144, para. 167 and *ff.* See also: *Matter of Viviana Gallardo et al.* Series A No. G 101/81, Considering paragraphs 12(b), 16, 20, 21 and 22, and *Control of Legality in the Exercise of the Attributes of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights).* Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, paras. 25 to 27.

201 *Cf. Case of "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 36.

the framework for the legal claims and reparations.[202] Evidently, this does not exclude the possibility for the parties to present the facts that explain or clarify that factual framework, or the facts that allow the State concerned to deny those that have been considered in the Merits Report.[203] Nor is the possibility excluded of the parties presenting supervening facts that may be forwarded to the Court at any stage of the proceedings before the delivery of the judgment.[204] Nevertheless, all things considered, when deciding in each case on the admissibility of arguments of this nature, the Court must protect the procedural balance between the parties,[205] because it cannot consider facts alleged by the parties that are not in keeping with the factual framework, or refer to legal arguments regarding facts that exceed this.[206]

146. Based on the foregoing, and since it is the State that has access to the probative elements, if, in the answering brief it submits to the Court, it presents a position that is contradictory with regard to the one maintained before the Commission, and which involves a substantial modification of the factual framework of the case, it could impair the functioning of the inter-American system and the principle of equality of arms in the proceedings before the Court, because the opposing party and the Commission cannot change their positions or their offer of evidence.

147. Thus, as can be seen from the communications presented by the State during the processing of the case before the Commission, the State advised that three judicial proceedings were underway: a criminal proceeding, a disciplinary proceeding, and the contentious-administrative proceeding. From the start, the State referred to the criminal proceeding against the crew of the UH1H aircraft.[207] On December 28, 2005, following the Admissibility Report, the State maintained its position regarding the three proceedings and indicated that it was "conducting the pertinent investigations by the competent civil authorities according to the principle of the ordinary judge and, consequently, it is processing those presumably responsible for the facts."[208] On December 14, 2006, the State indicated that "the criminal proceeding underway in the 12th Criminal Court has established the identity of the victims and the decision on the criminal responsibility of the accused is pending," and that "the Colombian authorities have conducted an adequate, effective, serious, independent and opportune investigation."[209] On July 13, 2011, following notification of

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[202] *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs. Judgment of May 6, 2008.* Series C No. 180, para. 18, and *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 195, para. 33. See also *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, para.15. Indeed, Articles 35 and 40 of the Court's Rules of Procedure establish the procedural opportunity for the Commission to offer expert evidence (in the brief submitting the case) and for the representatives of the presumed victims to present their pleadings and motions and offer evidence, based only on the factual determinations of the merits report.

[203] *Case of "Five Pensioners" v. Peru*, paras. 153 and 154; *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs.* Judgment of April 27, 2012 Series C No. 242, para. 17, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 27.

[204] *Cf. Case of "Five Pensioners",* para. 154, and Case of *González et al. ("Cotton field") v. Mexico. Preliminary objections, merits, reparations and costs,* Judgment of November 16, 2009, para. 17.

[205] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs,* para. 58, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 52.

[206] *Cf., mutatis mutandi, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits*, para. 27.

[207] On November 12, 2002, the State affirmed that "the investigation into the damage suffered as a result of the explosion of an explosive device in the village of Santo Domingo is being conducted by the military criminal justice system owing to a ruling on competence issued by the Superior Council of the Judicature," and three military agents have been accused. Note of the Ministry of Foreign Affairs, on November 12, 2002 (evidence file, tome 5, folios 2072)

[208] In addition, the State indicated that its responsibility "under domestic law, is defined as of an administrative nature; but evidence has been provided to the contentious-administrative proceedings in this case that allow the judge to have a high degree of certainty, which is expressed in the considering paragraphs of the ruling, about the factual circumstances and the type of responsibility of the agents, and this leads it to conclude that the type of State responsibility, is for a service offense (*falla del servicio*) […]."

[209] In addition, the State "reaffirms […] that the competent entity to conduct the investigation, namely the Prosecutor General's Office," had verified some of the facts "in the ideal scenario to clarify what happened: the criminal proceeding with the interventions of the victims and those who had been negatively affected." Note of the Ministry of Foreign Affairs, of December 14, 2006 (evidence file, tome 5, folios 2502). It also asserted that this "proved, with sufficient testimonial, documentary and technical evidence, that the deaths and personal injuries of which the civilian population of the village of

the Merits Report, prior to the submission of the case to the Court and months after the judgment of January 31, 2011, had been delivered, the State responded to the Commission's request for information on compliance with its recommendations as follows: "it should be noted that the said [three] proceedings were conducted in accordance with national and international standards, at all times ensuring the rights of the parties and other procedural principles and guarantees, thus the State is complying with its obligations concerning the investigation and determination of those responsible for the facts in question." Lastly, the State presented updated information on this criminal proceeding because, by that time, the second instance ruling against the Air Force servicemen had also been confirmed. Some days later, on July 19, 2011, the State sent a final brief to the Commission with similar information.[210]

148. Thus, both the representatives and the Inter-American Commission acted in the proceedings before the latter based on that position adopted by the State and, under those terms, the Commission prepared the Merits Report and, subsequently, submitted the case to the Court. In accordance with the principles of estoppel,[211] good faith, procedural equality and legal certainty, the State cannot make such substantial changes in the position it took before the Inter-American Commission by now presenting a hypothesis about the events based on a ruling delivered in the context of a criminal proceeding that, by a decision of the State itself, was not subject to discussion during the processing of the case before the Commission. Consequently, the said decision of the Criminal Court of the Arauca Specialized Circuit of January 31, 2011, invoked by the State, cannot be considered a supervening or complementary fact, not only because the State was aware of it before the Commission issued Merits Report 61/11 of March 24, 2011 (despite which, it did not provide any information on it at that time or when it was notified of the report), but principally because the proceeding in which this ruling was delivered does not form part of the factual framework of the case.[212]

149. In any case, it is not incumbent on the Court to analyze the alleged shortcomings of the said judgment of January 31, 2011, or rule on an alleged new "aspect that violates Articles 8 and 25 of the Convention to the detriment of the victims," as the representatives request. The Court observes that the said judgment was handed down in a proceeding in which the death of the

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Santo Domingo were victims during the events that occurred on December 13, 1998, were not the result of a "homemade bomb" as initially stated in the documents in the case file, but rather of a combat device, known as a cluster bomb, dropped from the FAC-4407 helicopter, and that the presumed perpetrators of the act are the latter's crew …." Note of the Ministry of Foreign Affairs, of December 14, 2006 (evidence file, tome 5, folios 2504).

[210] In particular, it indicated the following: "[t]he State, once again wishes to indicate that it has been complying with its obligations at the domestic and the international levels through its different judicial instances. In Colombia, in criminal matters , proceedings have been held to determine those presumably responsible for the events that occurred on December 13, 1998. In the criminal jurisdiction, the 12th Criminal Court of the Bogotá Circuit had initially delivered a guilty verdict […]. The State reiterates that the different jurisdictions have acted free of any obstruction and suspicion. As revealed in the different briefs and evidence submitted at this stage. It also recalls that the decisions of the contentious-administrative jurisdiction, the ordinary criminal jurisdiction, and the disciplinary jurisdiction comply with both domestic and international standards." Note of the Ministry of Foreign Affairs, of July 19, 2011 (evidence file, tome 6, folios 2753 and 2757).

[211] As established in its case law, this Court considers that a State that has adopted a certain position which produces legal effects cannot then, based on the principle of *estoppel*, assume another conduct that is contradictory to the former and that changes the status of the facts used by the other party to guide its actions. The principle of *estoppel* has been recognized and applied in both general international law and in international human rights law. In this regard, see *Case of the Río Negro Massacres v. Guatemala*, para. 25, and *Case of Neira Alegría et al. v. Peru. Preliminary objections*. Judgment of December 11, 1991. Series C No. 13, para. 29.

[212] On December 28, 2005, the State had advised that, as of May 30, 2000, the Human Rights Unit of the Prosecutor General's Office had ordered the procedural separation of the case into two proceedings (on the one hand, against members of the FARC with regard to the murder of eight members of the Armed Forces and, on the other, with regard to possible adverse effects on the civilians of Santo Domingo caused by members of the Army). *Cf.* Note of the Ministry of Foreign Affairs, of December 27, 2005 (evidence file, tome 5, folios 2212 and 2213, 2224). Even if it is considered that, after this, the Commission was aware that another investigation existed, the State gave no relevance to the said criminal proceeding against "alias *Grannobles*" for the purposes of the instant case. Consequently, the Commission made scant mention of it the merits report, which reaffirms the conclusion that the said proceeding, irrespective of its results, was not in keeping with the factual framework of the instant case, so that it is not a supervening fact either. For the same reason, and in view of the relevance that the State is now trying to give to the said ruling, neither can this be considered an additional piece of information that would now complement facts that are in keeping with the purpose of the case. Therefore, no further analysis of the said proceeding will be made in this Judgment.

civilians in the events of Santo Domingo was not investigated. Thus, according to information provided by the representatives, in the decision of the Superior Court of Arauca that declared admissible the application for *amparo* filed against that ruling by one of the presumed victims, it can be observed that "[i]n the ruling that is the subject of the application for constitutional *amparo* […] the then head of the respondent entity described the factual framework outlined in the accusation it contains [against "alias Grannobles"], because the facts did not include […] any deaths or injuries of victims other than the soldiers who were combating the guerrilla on the occasion of the facts described in the accusation; meanwhile, the deaths and injuries of those who were not being investigated in the proceedings during which the said ruling was issued […] are the subject of other probative measures, information on which was provided to this *amparo* proceeding (one that is awaiting that the Supreme Court of Justice, Criminal Cassation Chamber, decides in cassation the sentence imposed on the soldiers prosecuted in that proceeding and the other being handled by the 22nd Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, in Bogotá)."[213]

150. In other words, according to that Superior Court, in its judgment of January 31, 2011, the Arauca Criminal Court "rule[d] on events regarding which it did not have competence" and "the same situation that affects the petitioner, can be foreseen for all the members of the civilian population of the village of Santo Domingo included as victims who died or were injured […] because only the Armed Forces specifically described in the indictment were accused in the indictment." That is to say, the ruling of the Superior Court was the first time in the said process in which reference was made to civilian victims, as indicated by the Prosecutor General's Office itself in the context of this application for *amparo* and in a decision of May 2012 that ordered authenticated copies to be forwarded of the disciplinary and criminal proceedings in order to investigate the judge who delivered the judgment.[214] Even though this ruling of the Superior Court was revoked in second instance by the Supreme Court of Justice on May 10, 2012, this was for procedural reasons,[215] and did not invalidate the previous consideration of the Superior Court. According to the representatives, currently the application for *amparo* is awaiting a decision of the Constitutional Court on its eventual review.[216]

151. Also, regarding the text that the State called an "acknowledgement of responsibility," which was broadly based on this judgment of January 31, 2011, the Court must determine its admissibility and legal effects in accordance with Articles 62 and 63 of the Rules of Procedure and in exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the intentions of the parties. Should it determine that the said text constitutes an acknowledgement, it must establish whether it provides a sufficient basis, in the terms of the Convention, to continue hearing the merits and to determine eventual

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213 Application for amparo, first instance. Republic of Colombia. Superior Court of the Judicial District of Arauca. Sole Chamber, Reporting Judge Jaime Raúl Alvarado Pacheco. Case file Nº 81·001·22·08·000·20!2·0028. March 28, 2012 (evidence file, tome 23, folio 11054).

214 In May 2012, the Prosecutor General's Office opened an inquiry into the then judge of the Special Criminal Circuit of Arauca for "the presumed punishable offense of malfeasance in office" and also ordered that the presumed demobilized members of the guerrilla, whose statements had been used as probative grounds for the said ruling of January 31, 2011, be investigated for perjury (Prosecutor General's Office. Note No. 001581, of May 4, 2012, evidence file, tome 23, folios 10985 and 10986). Subsequently, in a decision of July 23, 2012, it rejected a petition of the two members of the Air Force sentenced and convicted in second instance, requesting that the investigating body declare that the criminal proceedings had terminated with the judgment of January 31, 2011 (evidence file, tome 52, folios 10985 and *ff.*). In this decision, provided by the representatives together with their final arguments, it indicated that the said judgment was not coherent with the indictment and the discussions during the hearing; it accepted the second instance's interpretation in the *amparo* proceeding, in which the civilian victims are mentioned in relation to the conduct of terrorism and not of the murders, and ordered attested copies to be made of the disciplinary and criminal files against the judge who delivered that ruling. The State agreed that decision be incorporated into the case file, but also argued that it did not affect the final nature of the ruling, because it could not be disregarded or declared illegal and, in addition, an appeal against the decision is pending.

215 In particular, it considered that the applicant was a civil party in the investigations that resulted from the questioned action and that, in that proceeding, he could assert his position by an appeal for review.

216 The representatives referred to: Constitution Court, Fifth Review Chamber, *amparo* case file T3490836

reparations.[217] To this end, the Court's powers are not limited to merely confirming, recording or taking note of the acknowledgement made by the State or to verifying its formal conditions, but it must compare it to the nature and severity of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and positions of the parties,[218] so that it can identify, insofar as possible and in exercise of its competence, the truth about what happened.[219]

152. Since the State offers this "acknowledgement" based on the violation of the right to the truth and the "access to administration of justice" of the presumed victims, arguing that "enormous confusion" exists as well as contradictory position in relation to the events, owing to the "evidentiary shortcomings during the domestic criminal proceedings," this act contradicts its position before the Commission. According to the State itself, the said text "does not imply acknowledging or accepting the facts presented by the Commission and by the victims," so that, in fact, it would not be acquiescing to the claims of the opposing party. In any case, as indicated, one of those two criminal proceedings that the State indicates contradict each other, is not part of the purpose of the instant case, so that the State's text is unsubstantiated and will be not be considered as an acknowledgement of responsibility, and does not have legal effect.

153. Consequently, the Court will now consider the other arguments relating to the investigation of the facts and the development of the domestic proceedings.

B.2. Obligation to investigate and the domestic proceedings

154. In the understanding that, given the nature of the events of the instant case, the ordinary criminal jurisdiction plays a leading role in the determination of the facts and the corresponding responsibilities, it is possible to consider whether the proceedings processed under this jurisdiction and under the disciplinary and the contentious administrative jurisdictions have been "useful and effective to guarantee the right of access to justice, as a complement to establish the truth, determine the scope and dimensions of the State responsibility, and make integral reparation for the violations."[220]

155. The Court recalls that, based on the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.[221] Furthermore, the Court has indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth about what happened and to punish those eventually found responsible.[222]

156. The Court has established that the obligation to ensure rights (Article 1(1)) includes the legal obligation "to prevent, within reason, human rights violations, to carry out a real investigation of the violations that have been committed within its sphere of jurisdiction using all available means in order to identify those responsible, impose the pertinent punishments [on those responsible], and ensure adequate reparation to the victims." The most important element is to

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[217] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 105, and *Case of Gelman v. Uruguay*, para. 26.

[218] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of the Río Negro Massacres v. Guatemala*, para. 27.

[219] *Cf. Case of Manuel Cepeda Vargas v. Colombia,* para. 17, and *Case of the Río Negro Massacres v. Guatemala*, para. 22.

[220] *Case of Manuel Cepeda Vargas v. Colombia,* para. 130. See also *cases of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 157, and *Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, para. 128.

[221] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 91, and *Case of González Medina and family members v. Dominican Republic,* para. 207.

[222] *Cf. Case of Bulacio v. Argentina*, para. 114, and *Case of González Medina and family members v. Dominican Republic,* para. 255.

elucidate "whether a specific violation […] has occurred with the support or tolerance of the public authorities, or whether the latter have acted so that the violation has been committed without any attempt at prevention or with impunity."[223] The obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of this type of act.[224]

157. Although the Court has established that the obligation to investigate is one of means and not of results, this does not mean, however, that the investigation may be undertaken "as mere formality, predestined to be ineffective"[225] or as a mere measure taken by private interests that depends on the procedural initiative of the victims or their next of kin, or on the contribution of probative elements by private interests.[226] It is the responsibility of the State authorities to conduct a serious, impartial and effective investigation, using all the available legal means, designed to determine the truth and to pursue, capture, prosecute and eventually punish the authors of the acts, especially in a case such as this one, in which State agents are involved.[227]

158. With regard to the military criminal jurisdiction, the Court reiterates its consistent case law[228] on the lack of competence of this jurisdiction to prosecute human rights violations and the restrictive and exceptional scope that it should have in the States that still retain it. This Court has established that, owing to the right harmed, the said jurisdiction is not competent to investigate and, as appropriate, prosecute and punish the authors of human rights violations, and that only members of the Armed Forces on active duty can be tried by the military justice system for the perpetration of crimes or misdemeanors that, by their nature, impair rights inherent in the military system.[229]

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[223] *Case of Velásquez Rodríguez v. Honduras*. *Merits*, para. 173, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 47.

[224] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 1, 2006 Series C No. 148, para. 319, and *Case of González Medina and family members v. Dominican Republic*, para. 203.

[225] *Case of Velásquez Rodríguez*, *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 248.

[226] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*, para. 177, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 248.

[227] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*, para. 143, and *González Medina and family members v. Dominican Republic*, para. 204.

[228] *Cf. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, paras. 116, 117, 125 and 126; *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, paras. 112 to 114; *Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90, paras. 51, 52 and 53; *Case of 19 Tradesmen v. Colombia*. *Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, paras. 165, 166, 167, 173 and 174; *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, paras. 141 to 145; *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 202; *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, paras. 139 and 143; *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*, paras. 189 and 193; *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, paras. 53, 54 and 108; *Case of La Cantuta v. Peru. Merits, reparations and costs*, para. 142; *Case of the La Rochela Massacre v. Colombia*, para. 200; *Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 105; *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 66; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, paras. 118 to 120; *Case of Usón Ramírez v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2009. Series C No. 207, paras. 108 to 110; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, paras. 272 and 273; *Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 176; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 160; *Case of Cabrera García and Montiel Flores v. Mexico*, paras. 197 to 199, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 240.

[229] Furthermore, on numerous occasions the Court has indicated that "[w]hen military justice assumes competence in a matter that should be examined by ordinary justice, the right to an ordinary judge is violated and, *a fortiori,* due process of law," and this, in turn, is closely related to the right of access to justice itself. *Cf. inter alia*, *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 128; *Case of Cabrera García and Montiel Flores v. Mexico*, para. 197, and *Case of Vélez Restrepo and family members v. Colombia*, para. 240.

159. In the instant case, although the investigations into the facts were delayed while they were under the jurisdiction of the military criminal justice system, the Colombian Constitutional Court determined subsequently that the investigations corresponded to the ordinary criminal system of justice[230] and ordered the Superior Council of the Judicature to deliver a new judgment. Accordingly, the said Council decided the conflict of competences in favor of the ordinary criminal jurisdiction, which continued the investigation (*supra* para. 102).

160. Once the investigation was being conducted by the ordinary justice system, the Prosecutor General's Office took numerous and effective investigative measures which produced tangible results (*supra* paras. 104 and *ff.)* and allowed it to press charges. On September 24, 2009, the 12th Criminal Court of the Bogotá Trial Circuit delivered a first instance judgment finding three Armed Forces servicemen guilty of 17 counts of homicide, committed simultaneously with 18 counts of bodily harm, considering:

> […] "It is evident that the crew of the UH1H was aware of the prohibition to attack the village and its inhabitants, not only because this was stated repeatedly during the proceedings, but also because based on the principle of distinction, this was imposed by the Colombian Air Force manuals and regulations in force on December 13, 1998, which they obligatorily had to be aware of. […]
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> […] It has been sufficiently proved in the case file that, prior to the aerial operation on the morning of December 13, 1998, which gave rise to the result that originated these proceedings, the pilots of the participating aircraft, together with other persons, were assembled and a selection was made of the targets to be taken down, the aircraft that would intervene, and the weapons that would be used. In addition, when the cluster bomb was handed over, the pilot of UH 500, at the time Lieutenant G.L., indicated to the crew of UH1H the place where they should launch the device, reason why the court finds that there is sufficient evidence in the case file to issue authenticated copies of this measure against them, adducing that the crimes have not prescribed.[231]
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> In sum, there is no doubt that the material cause of the deaths and injuries that originated these proceedings was the launch of the cluster bomb that fell on the village, affecting the persons who were within the perimeter of the range of the fragments of the six bombs.[232]

161. The above decision was confirmed by the judgment of June 15, 2011, of the Superior District Judicial Court of Bogotá, Criminal Chamber[233].

162. Regarding the allegations of the representatives in relation to the lack of diligence in the identification of all those responsible and the circumstances in which the facts occurred in the

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230 Consequently, when deciding the conflict of competences between the military criminal and the ordinary criminal jurisdictions, the First Review Chamber of the Constitutional Court delivered Judgment T-932 of 2002 on October 31, 2002, in which it considered: "3.9. On the other hand, if certainty existed that members of the Military Forces were the perpetrators of these crimes – crimes that by their nature and characteristics, since they were committed on a mass scale and with singular cruelty against civilians who were not involved in the armed conflict that the country is experiencing and that constitute a very serious violation of human rights and international humanitarian law – this would be contrary to the functions that art. 218 of the Constitution assigns to the Military Forces, consisting in the defense of the sovereignty, independence, integrity of national territory, and the constitutional order." Constitutional Court of Colombia, First Review Chamber, Judgment T-932/02 of October 31, 2002 (evidence file, tome 3, folio 832).

231 "While it is true that, the unlawful result was produced within the context of lawful military actions in light of the Constitution and the law, because the authorities are called on to protect the sovereignty of the State and to ensure respect for the rights and property of the co-parties to the Constitution, it is also true that the accused committed a violation of international humanitarian law by deliberately ignoring the principle of distinction, dropping the bomb very near to a village where there were civilians, despite the imprecision and lethal nature of this bomb, and this also entailed a violation of the manuals and regulations of the Colombian Air Force, which they were aware of owing to their functions." Judgment of the 12th Criminal Court of the Bogotá Trial Circuit with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, C.R.P. *et al.*, September 24, 2009 (evidence file, tome 20, folio 10648).

232 Judgment of the 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10646 and 10648).

233 The judgment indicated that "[d]uring a confrontation between a cell of the FARC and members of the National Army near the village of n Santo Domingo […], the aerial support of the Colombian Air Force was requested and around 10:02:10 a.m. on December 13, 1998, in order to neutralize part of the subversive group that was in the wooded area *(mata de monte)* located near the said village, the FAC helicopter […] dropped a U.S. manufactured explosive device, known as a cluster bomb – composed of six 20-lb fragmentation grenades – it being indicated that the explosion harmed civilians in the village resulting in the death of 17 persons and the injury of another 21, with women and children among the victims." *Cf.* Superior Court of the Bogotá Judicial District, Criminal Chamber, judgment of June 15, 2011, deciding the appeal filed against the first instance judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 20, folios 10791)

ordinary criminal jurisdiction, the Court is not a criminal tribunal in which the criminal responsibility of the individual can be determined,[234] so that State responsibility under the Convention should not be confused with the criminal responsibility of private individuals.[235] In order to establish that a violation of the rights established in the Convention has occurred, it is not necessary to determine the guilt of its authors or their intentions, as under domestic criminal law, and it is not necessary to identify individually the agents to which the acts that violate the Convention are attributed.[236] It is sufficient that the State has an obligation and that it has failed to comply with it.[237]

163. In addition, the Court notes that the representatives have not submitted sufficient facts and arguments to consider that the violation of the rights to judicial guarantees and judicial protection is constituted by a failure to investigate the possible criminal responsibility of other military participants in Operation "*Relámpago II*" who may have taken part in the definition of the launch site and use of the cluster device or who were aware of the presence of the civilian population in the village of Santo Domingo. In addition, as will be analyzed below (*infra* para. 246), the representatives did not present concrete and specific arguments or evidence that would allow the Court to relate the activity of the multinational companies operating in the area or that had contracts with the Armed Forces with the violations declared in relation to the facts of the case. Even though such hypotheses are plausible, given the significant proportions and results of the airborne operation deployed in this case, insufficient elements have been provided to consider that a more thorough examination of these lines of investigation would lead to a specific violation of the Convention, notwithstanding the implications of these other possible criminal or administrative responsibilities that, in the future, must be determined by the competent domestic authorities in the criminal proceedings that are underway or others that must be initiated.

164. Regarding the reasonableness of the time frame for the investigation, to the extent that it could constitute, in principle and in itself, a violation of judicial guarantees,[238] the Court has considered four elements to determine this: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities,[239] and (iv) the general effects on the legal situation of the person involved in the proceeding.[240]

165. The Court considers it evident that this is a complex case; mainly due to all the technical aspects involved in an effective investigation, as well as to the number of victims and actors, members of the Colombian Air Force and the Army, who participated in that specific context of armed conflict in the area. Numerous investigative measures taken by the Prosecutor General's Office have been referred to, which denote constant actions seeking to determine the facts and a plausible follow-up on logical lines of investigation, notwithstanding the aspects that still need to be investigated. Even though the cassation remedy remains pending a decision, it can be considered that the ordinary jurisdictional authorities have been fulfilling their functions adequately. In addition, although, in this case, the investigation is an obligation *ex officio* of the State, the victims

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234 *Cf. Case of Raxcacó Reyes v. Guatemala*. Judgment of September 15, 2005. Series C No. 133, para. 55; *Case of Fermín Ramírez v. Guatemala*. Judgment of June 20, 2005. Series C No. 126, paras. 61 and 62; *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs,* para. 90; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits,* para. 71, and *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 37.

235 *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*, para. 118.

236 *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs,* para. 110; *Case of 19 Tradesmen. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109, para. 141, and *Case of Maritza Urrutia. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 41.

237 *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*, para. 113.

238 *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 154.

239 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77 and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009 Series C No. 196, para. 112.

240 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, para. 273.

have played an active part in the investigations. Finally, in the circumstances of the case, it is not necessary to analyze the fourth element of the reasonable time.[241] Consequently, it has not been proved that the State violated Article 8 of the Convention by exceeding the reasonable time in the investigations.

166. Lastly, the representatives indicated their concern with regard to legislative initiatives being promoted in Colombia, in particular the one known as the "legal framework for peace," the purpose of which is "to ensure the coherence of different legal instruments of transitional justice within the framework of article 22 of the Colombian Constitution," approved by the Congress of the Republic of Colombia in June 2012. The Court observes that these facts fall outside the factual framework of this case, so that it is not incumbent on it to rule in this regard.

167. Regarding the disciplinary proceeding, the Court has considered that this may be assessed to the extent that it contributes to the clarification of the facts and that its decisions are relevant as regards the symbolic value of the message or reprimand that this type of sanction can signify for public officials and members of public institutions.[242] In turn, insofar as it is intended to protect the administrative function and ensure the correction and control of public officials, an investigation of this nature can complement, but not substitute fully, the function of the criminal jurisdiction in cases of grave human rights violations.[243] In the instant case, the Court considers that the disciplinary proceeding has contributed to determine the State responsibility in this case.[244]

168. Regarding the contentious administrative proceeding, in addition to being relevant for the purposes of reparations, the Court considers that, in this case, it can be assessed positively

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[241] *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 284, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 138.

[242] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 215; *Case of González et al. ("Cotton field") v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 373; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 206; *Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 1, 2006 Series C No. 148, para. 327, and *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 203.

[243] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 203; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 215, and *Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 1, 2006 Series C No. 148, para. 333.

[244] Thus, the first instance ruling of the Special Disciplinary Commission of the Attorney General's Office of October 2, 2002, found that: "on October 27, 2000, disciplinary charges were brought against C.R.P., J.J.V. and H.M.H.A. Specifically, Captain C.R.P. was accused of launching an explosive device, a cluster bomb, in full knowledge of the danger that it involved, because the chosen target was in the village very close to the place where, that morning, the civilian population was assembled, who could be seen easily from the helicopter. The Attorney General's Office maintains that this conduct constitutes a serious violation of international humanitarian law, committed in the context of *dolus eventualis*. Flight Technician H.M.H.A. was accused of, on December 13, 1998, during the military operations in the village of Santo Domingo, in response to the order given by the pilot of the said aircraft, dropping a cluster bomb on a previously chosen target, being fully aware that it was located in the village near the place where most of the inhabitants were assembled, which he could see from the helicopter owing to the visibility conditions at the time. This conduct corresponds to *dolus eventualis*." Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folios 991 to 993). Thus, "in keeping with the criteria established in article 27 of Law 200 of 1995, it is found that the two public servants disciplined in these proceedings, who acted as co-authors of the indictable conduct, committed a disciplinary offense owing to the violation of the Constitution and of international humanitarian law, which translates into the violation of the obligation contained in article 40(1) of that Law, and is serious owing to the malicious intent of the conduct, the rank and mandate of the accused, and the lack of consideration and respect for the civilian population and their fundamental rights, especially the grave violation of their fundamental rights to life and physical integrity." Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folio 1030). Major J.M.G.G. was accused of a disciplinary offense consisting of omissive conduct owing to his guilt for not exercising his authority regarding the troops located in the urban area of the village of Santo Domingo from December 16 to 22, 1998, a lapse during which he had negligently allowed the soldiers to arbitrarily enter the homes, taking advantage of the fact that the inhabitants had displaced to other villages because of the bombardment of December 13, 1998. Lastly, Lieutenant J.J.V. was charged with a conduct of omission because, being fully aware of what had happened, he concealed the potentially irregular actions of the other members of the crew. Attorney General's Office, Special Disciplinary Commission, case file 155-45564-00, October 2, 2002 (evidence file, tome 3, folio 1003).

because it has already established the responsibility of the State. In a judgment of May 20, 2004, the Arauca Contentious Administrative Court declared the Colombian State administratively responsible for the facts. The indictment on which the decision was founded was entitled "service failure":

> Thus the responsibility of the Colombian Air Force has been fully established in the facts for which reparation of the damage caused is claimed, as the Colombian Air Force Inspectorate General itself affirmed when conducting a preliminary inquiry.
>
> The authorities are established to protect, *inter alia*, the life and property of the individual, and are legitimized to use force and weapons to combat those who attack the legally constituted system and society; but, during the conflict, it is necessary to make a distinction between combatants and non-combatants.
>
> The fact of firing from a Colombian Air Force helicopter indiscriminately against a civilian target, near which were civilians who were *not* participants in the conflict, signified that one of the State's agents ignored the State's obligations, thus resulting in a service failure, which entailed the State's patrimonial responsibility and, necessarily, this must be declared. […].[245]

169. In a judgment of November 19, 2008, Section Three of the Council of State approved the conciliatory agreements reached between the presumed victims and the Ministry of Defense and also ruled on four of the claims in which an agreement was not approved.[246]

170. In this regard, it should be observed that the State indicated in its answering brief that the conciliation promoted in second instance prevented the Council of State from ruling on the indictment, "but in the discussions at the administrative level to authorize the judicial conciliation (within the Ministry of Defense's conciliation committee), it was always clear that the conciliation was based on the theory of special damage and not subjective responsibility." Thus, it argued that the reparations and the acknowledgement made by the State in the conciliatory agreement "must be interpreted in the context of the possible responsibility of the administration for special damage," according to which the State may repair damage caused by its valid and legitimate actions, so that the illegality of the actions carried out by the Colombian Air Force was not admitted, and neither does this equate to the international responsibility of the State under the Convention. In addition, the State "declare[d] that it respects and abides by the decisions adopted by domestic justice, but in relation to this specific case it considers that the actual assessment of the evidence shows that […] the State acted legitimately and opportunely, in full exercise of its constitutional and legal competence [and, t]herefore, the service failure declared by domestic justice as grounds for the State's administrative responsibility is inexistent." Nevertheless, the Court observes that this argument of the State is not supported by what was declared in the above-mentioned decisions of the contentious administrative courts.[247]

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245 Judgment of May 20, 2004 el Contentious Administrative Court of Arauca. Action for Direct Reparation (evidence file, tome 20, folios 10233 and 10234).

246 "As can be seen, in this case it was proved that the Nation had incurred in a service failure by firing on civilians during the pursuit of a clandestine aircraft that presumably carried out drug-trafficking labors, a conduct that is culpable in light of constitutional and international principles. Consequently, when declaring the State's financial responsibility not only is reparation made for the damage caused to the victims, but also the protection of fundamental rights is ensured, so that the events prosecuted are not repeated." *Cf.* Judgment of November 19, 2008, Section Three, Council of State, Mario Galvis Gelves *et al.*, case file No 07001-23-31-0002000-0348-01, Councilor Rapporteur: Ramiro Saavedra Becerra (evidence file, tome 3, folios 1080 to 1081).

247 The Arauca Contentious Court considered: "Can the premise of special damage be established in this case? The Chamber considers that it cannot, because although, initially, the National Army and the Air Force were conducting a legitimate action by pursuing a clandestine aircraft dedicated to drug-trafficking as well as combating members of the guerrilla that were waiting for it and protecting it, this legitimate and obligatory action for the Armed Forces became blurred when the helicopter FAG 4407 fired on civilians with criminal intent, as it was referred to in the order issued to investigate the members of the Armed Forces. In other words, not even a wrongful act can be established, because at least the captain of the aircraft was aware of the place towards which the launch was directed. […] Thus there was a fault of the Administration, and this fault was duly proved during the proceedings; consequently, the indictment can be founded on this regime as the petitioner claims without this having any other relevance for the effects of the calculation of the sentence, because the fact that the deaths and injuries were caused by official weapons also supports the indictment, freeing the petitioner from certain probative aspects since the exercise of dangerous activities is involved." Judgment of May 20, 2004, of the Contentious Administrative Court of Arauca. Action for Direct Reparation (evidence file, tome 20, folios 10233 and 10234).

171. All things considered, in the circumstances of this case, what is relevant for the Court is that the domestic organs for the administration of justice have already made an extensive determination of several implications of the State's responsibility for the facts, irrespective of the levels of individual, criminal or disciplinary responsibility of State agents or private individuals, definition of which corresponds to the domestic jurisdiction, even if not all the facts or classifications of the facts have been sufficiently or fully investigated or clarified. In these terms, and in application of the principle of complementarity, it should not have been necessary for the Court to rule on the facts that resulted in the violations of the rights acknowledged and repaired at the domestic level; namely those that refer to the rights to life, personal integrity and special measures of protection for children.

172. However, as has been observed, during the proceedings before the Court, the State has attempted to disregard and cast doubts on what its judicial and administrative organs have done to determine the truth about what happened and the consequent responsibilities, and also to make reparation to the victims of the facts of this case, and has maintained the dispute about the facts. Therefore, and without prejudice to the assessments made in this chapter, the Court will continue analyzing the other alleged violations.

173. Based on all the foregoing, it has not been proved that the State failed to conduct a serious, diligent and exhaustive investigation, within a reasonable time and, to the contrary, it is possible to consider that the other domestic mechanisms and procedures have contributed to clarifying the truth and determination of the scope of State responsibility. Consequently, the Court finds that the State is not responsible for the violation of Articles 8 and 25 of the Convention. Consequently, the Court finds that the State has not violated Articles 8 and 25 of the Convention in this case.

VII-2
RIGHTS TO LIFE, TO PERSONAL INTEGRITY AND TO MEASURES OF PROTECTION FOR THE CHILDREN, AND OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS

A. Arguments of the Commission and allegations of the parties

A.1. Right to life

174. The Commission concluded in its Report that the State had violated the rights recognized in Article 4(1) of the Convention,[248] in relation to Article 1(1) thereof, to the detriment of the 17 people who died in the village of Santo Domingo on December 13, 1998, in relation to launch of the cluster bomb on the urban area of the village. The Commission also stated that "the fact that 27 people were injured and not killed [was] merely fortuitous" and, therefore, it considered that the violation of Article 4 also applies to those who were injured in the bombardment. The Commission referred to principles and norms of international humanitarian law and considered "that the precision of cluster bombs is limited and they have considerable anti-personnel force" and that those who were in the village at the time of the bombardment were civilians, which was known by the members of the Armed Forces who crewed the aircraft.

175. The representatives agreed with the Commission's statement and, in addition to what has been indicated previously, indicated that, in the domestic criminal, disciplinary and contentious administrative proceedings it had been established, without doubt, that the explosion in Santo Domingo had been caused by the launch of a cluster bomb by the Colombian Air Force. The representatives also argued that "since this was an indiscriminate attack with a fragmentation bomb […] [it was] necessary to assess the situation of all the people who were in the village of Santo Domingo at the time of the aerial attack, because it was only a question of luck that they were not hit by shrapnel or fragments of the cluster bomb." In this regard, they argued that, also, "the right to life was directly affected" of those who were seriously injured and that, since this was an indiscriminate attack with a fragmentation bomb, the State was also responsible for the violation of Article 4(1) of the Convention "to the detriment of all the persons who were present at

[248] Article 4(1) of the American Convention establishes: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

the moment of the launch" that day in the village of Santo Domingo, who they did not identify. Lastly, the representatives indicated that the errors, obstruction and distortion of the criminal investigation also constituted violations of the State's obligations under Article 4 of the Convention, because "only two perpetrators of the murders have been tried […] even though there is considerable evidence that establishes the intellectual participation of senior military commanders in the planning of the operation, as well as in the subsequent cover-up designed to ensure impunity in this case."

176. For its part, the State argued that, in this case, none of the structures of State responsibility are constituted, so that the claim of the Commission and of the representatives should not be admitted, because it has been proved that there was no causal relationship between the actions deployed by the State agents and the events that occurred in Santo Domingo. It added that "there was no type of complicity or collaboration between the FARC and the Armed Forces." Lastly, the State affirmed that the civilian population had not been placed in any objective danger because the AN-M1A2 device had been launched at a distance where it was not possible to cause damage to the village and that "the destructive force of [this type of] device […] is less than 30 meters."

A.2. Right to personal integrity

177. The Commission maintained that "in this case several survivors were injured who were also next of kin of the victims who perished in the bombardment." In this regard, the Commission observed that the loss of a loved one in a context such as the one described results in a suffering incompatible with Article 5(1) of the American Convention.[249] In addition, it observed that, following the explosion of the device, the survivors and injured were attacked from the helicopter, *Arpía*.

178. The representatives added to the Commission's arguments that, following the explosion, "the State agents not only omitted to provide the injured with the required medical attention, as was their duty, but rather, when some people tried to help those who were injured, they were again attacked with machine guns." They also indicated that the absence of an effective investigation encouraged numerous opinion articles, newspaper publications and messages in different media according to which the deaths and injuries were not attributable to the Colombian Air Force, but rather to the FARC guerrilla, and they indicated that "these versions also [harmed] the moral integrity of the victims of the massacre, whose testimony [was] questioned, suggesting that it was false and a lie."

179. For its part, the State argued that it was not responsible for violating or jeopardizing the right to physical integrity of the inhabitants of Santo Doming, because it had "proved sufficiently that the incident was the result of the detonation of a homemade explosive device" because "there was no causal relationship between the harmful act and the action deployed by the State agents." It added that "the Air Force did not carry out attacks using either bombs or machine guns or missiles on the people who, on December 13, 1998, left Santo Domingo for surrounding villages." The State also affirmed that it cannot be accepted that the release of its version of the facts, which is contrary to the statements of the victims, be considered a violation of the moral integrity of the inhabitants of Santo Domingo, because "it is based on considerable evidence and constitutes its legitimate exercise of the right to contradiction and defense." It added that it had "not [taken] measures tending to revictimize, harass or stigmatize the presumed victims."

A.3. Right to measures of protection for the children

180. The Commission considered that the State had violated the rights recognized in Article 19 of the American Convention,[250] in relation to Articles 1(1), 4 and 5 thereof, to the detriment of the six children who died and the other nine who were injured in the bombardment.

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[249] Article 5(1) of the American Convention establishes: "Every person has the right to have his physical, mental, and moral integrity respected."

[250] Article 19 of the American Convention stipulates: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

181. The representatives argued that the State had not only failed to comply with its obligations of special protection for the children of the village of Santo Domingo, but had increased their situation of vulnerability by carrying out an indiscriminate attack against the civilian population of the village." They also indicated that, owing to the internal conflict that Colombia is experiencing, children are in a situation of greater vulnerability so that the State's obligations are increased; however, "in this case, children were murdered, injured, some were orphaned, others had to displace, and the whole child population was placed at risk." They added that the children of the village "had to support the ugliness of witnessing the attack, see children and adults, family members and friends destroyed," and "to support the situation of displacement of their families and the destruction of the community of Santo Domingo that had constituted their living environment."

182. Lastly, the representatives argued that "the subsequent actions of the State, in the public declarations made by the senior military commanders, assuring and suggesting that the population of Santo Domingo collaborated with the guerrilla, multiplied the children's risk of being stigmatized in an area of armed conflict," and that the State had failed to comply with its obligation under Article 19 of the Convention in relation to all the children of Santo Domingo, because "it did not take the necessary measures to avoid subsequent attacks against the civilian population in such a complex context of armed conflict and the emergence of paramilitary groups in the department of Arauca."

183. For its part, the State argued that it recognized fully the best interests of children and the special protection obligations that are required with regard to them; that it was the FARC guerrilla that installed a homemade bomb in the village of Santo Domingo, and that "on seeing the village and the presence of civilians there, with a high probability that there were also children, the armed forces opted to implement and concentrate the military operation in a place away from the village where there was no probability of harming children." The State added that the members of the Armed Forces planned the operations against the FARC guerrilla in order to defend the civilian population and that, therefore, the intervention was "intended to comply with the obligations of protection and guarantee attributed to it." Lastly, the State indicated also that, far from stigmatizing the children, it has always considered them innocent victims of an unfortunate armed conflict.

A.4. Obligation to adopt domestic legal measures[251]

184. The Inter-American Commission did not offer any conclusions in relation to Article 2 of the Convention in the Merits Report.

185. The representatives argued that "the Colombian State did not have an adequate legislative framework that truly developed the obligation to protect human rights in relation to the activities of multinational corporations on its territory." They indicated that, in the instant case, the contribution to the Santo Domingo massacre of the private company OXY and Airscan, the company it contracted for security matters, was evident.

186. For its part, the State argued that "any company operating under Colombian jurisdiction is subject to the legal and constitutional framework of Colombian law, [and that] this includes respect for human rights."

[251] Article 2 of the American Convention establishes that "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

B. Considerations of the Court

B.1. The obligation to respect and guarantee the rights to life and to personal integrity and measures of protection for children

187. In light of the arguments of the parties, the Court will now examine the alleged international responsibility of Colombia for the presumed violation of the rights to life, personal integrity and measures of protection for children in relation to the obligations of respect and guarantee.[252] The Court finds it pertinent to make a joint analysis of these alleged violations owing to the complex nature of the circumstances inherent in the events that occurred in this case, which reveals interrelated effects on different rights and prevents a fragmented analysis. Similarly, since the events occurred in the context of a non-international armed conflict, as already mentioned (*supra* paras.21 and *ff.),* as it has on other occasions,[253] the Court considers it useful and appropriate to interpret the scope of the treaty-based norms and obligations in a way that complements the norms of international humanitarian law, based on their specificity in this matter,[254] in particular the 1949 Geneva Conventions[255] and, in particular, Article 3 common to the four conventions[256] (hereinafter also "common Article 3"), the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts

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[252] Article 1(1) of the American Convention stipulates that "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[253] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 179; *Case of the Mapiripán Massacre v. Colombia*, paras. 114, 153 and 172, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 141.

[254] It should be recalled that international humanitarian law must be applied by the parties in the context of non-international armed conflicts, provided that the facts correspond to situations that occur because of and during the conflict. See, in this regard, International Criminal Court, Pre-Trial Chamber, The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-803, decision confirming charges, of January 29, 2007, para. 287, and the International Criminal Tribunal for the former Yugoslavia, The Prosecutor *v.* Tadiç ("Prijedor"), No. IT-94-1, Judgment on preliminary objections (competence) of October 2, 1995, para. 70. See also, in the case of Colombia, Supreme Court of Justice, Criminal Cassation Chamber, Justice and Peace Second Instance, decision of September 21, 2009, case file 32,022, Reporting Judge: Sigifredo Espinosa Pérez, pp. 186 and 187 of 229. In the instant case, the parties and the Commission agreed to consider that the Court should analyze the situation, interpreting the American Convention in light of the pertinent provisions of international humanitarian law.

[255] See, in particular, Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949. Entry into force: 21 October 1950, and ratified by Colombia on November 8, 1961.

[256] Article 3 common to the 1949 Geneva Conventions establishes: "Non-international conflicts: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. 2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

(hereinafter "Protocol II"), to which the State is a party,[257] and customary international humanitarian law.[258]

188. Regarding the rights to life and to personal integrity, the Court reiterates that they not only imply that the State must respect them, but also require the State to adopt all appropriate measures to guarantee them, in compliance with its general obligation established in Article 1(1) of the American Convention.[259] Regarding the foregoing, the Court has indicated that the general obligations to respect and guarantee rights established in Article 1(1) of the American Convention give rise to special obligations that can be determined in function of the particular needs for protection of the subject of law, based on either his personal condition or the specific situation in which he finds himself.[260] In addition, the Court has also established that the State's international responsibility is based on acts or omissions of any of its powers or organs, irrespective of their rank, that violate the rights and obligations contained in the American Convention.[261]

189. Regarding the obligation of respect – the first assumed by the States Parties – in the terms of the said article this necessarily entails the notion of restrictions to the exercise of the State's powers.[262] In addition, regarding the obligation of guarantee, the Court has established that this can be complied with in different ways, in function of the specific right that the State must guarantee and of the particular needs for protection.[263] This obligation entails the States' obligation to organize the government apparatus and, in general, all the structures through which public powers are exercised, so that they are able to ensure legally the free and full exercise of human rights.[264] As part of this obligation, the State has the legal obligation "to prevent, within reason, the violation of human rights, to investigate seriously any violations that have been committed within its sphere of jurisdiction using the measures available to it in order to identify those responsible and impose pertinent punishments on them, and to ensure adequate reparation to the victim." [265]

190. The Court has also established that the right to life occupies a fundamental place in the American Convention, because it is the essential presumption for the exercise of the other rights.[266] States have the obligation to guarantee creation of the conditions required to ensure that there are no violations of this inalienable right and, in particular, the duty to prevent their agents from harming it. This active protection of the right to life by the State not only involves its

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[257] Colombia has been a party to Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of the Victims of Non-international Armed Conflicts since August 14, 1995.

[258] *Cf.* International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, Cambridge, 2007.

[259] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 139, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 145.

[260] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 111; *Case of González et al. ("Cotton field") v. Mexico,* para. 243, and *Case of Vélez Loor v. Panama*, para. 98.

[261] *Cf.*, *Case of Velásquez Rodríguez*. *Merits*, para. 164, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 142.

[262] *Cf. The word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21.

[263] *Cf. Case of Vargas Areco v. Paraguay.* Judgment of September 26, 2006. Series C No. 155, para. 73, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 144.

[264] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits*, para. 166, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 144.

[265] *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 144.

[266] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 144, *and Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 145.

legislators, but also every State institution and those who must safeguard security, whether they are their police forces or their armed forces.[267]

191. Furthermore, the American Convention expressly recognizes the right to personal, physical and mental integrity, and their violation is a type of violation that has different connotations of degree and […] the physical and mental consequences differ in intensity according to endogenous and exogenous factors that must be proved in each specific situation."[268] In addition, the Court has maintained on other occasions that the mere threat that a conduct prohibited by Article 5 of the Convention could occur, when this is sufficiently real and imminent, may in itself be in conflict with the right to personal integrity.[269]

192. In addition to the above, the Court reiterates that cases in which the victims of human rights violations are children are especially serious,[270] because the latter have special rights to which specific obligations of the family, society and the State correspond.

193. In this regard, the Court recalls that it is not a criminal court or a court of appeal[271] and that "it corresponds to the State's courts to examine the facts and the evidence presented in each particular case."[272] The instant case does not relate to the innocence or guilt of the members of the Colombian Air Force who took part in the operation, or of the members of the FARC guerrilla groups that participated in confrontations in places near villages with a civilian population, circumstances that could, if appropriate, be analyzed by the competent domestic jurisdiction. This case relates to the conformity of the acts of State agents with the American Convention. Consequently, with the exception of matters relating to very specific issues in keeping with the purpose of the instant case and the exercise of its contentious function, the Court will determine whether the State is responsible for the alleged violations of the Convention, while it is not incumbent on it to analyze the "probative flaws" of the first and second instance criminal judgments, or criminal structures, or criteria for individual criminal charges, as the State seeks.

194. The Court will now examine the alleged violations of Articles 4, 5, 19 and 2 in the following order: (1) the launch of an AN-M1A2 cluster bomb on Santo Domingo; (2) the alleged machine gun attack; (3) the measures of protection in favor of children; (4) the right to integrity of the next of kin; (5) the obligation to adopt domestic legal provisions, and (6) conclusions.

B.2. The launch of an AN-M1A2 cluster bomb on Santo Domingo

195. Regarding the events that resulted in the death of 17 people and injuries to another 27 in the village of Santo Domingo on December 13, 1998, as already indicated, the Court observes that the arguments and evidence provided reveal that there are two versions of what happened: first, the one presented by the Commission and the representatives according to which the Colombian Air Force was responsible for launching an AN-M1A2 device on the village at 10.02 a.m., a version also concluded by the 12th Criminal Court of the Bogotá Circuit (*supra* para. 109) and the Bogotá Superior Criminal Court (*supra* para. 113), which is based on testimony and different investigative

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267 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, paras. 144 and 145, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 147.

268 *Case of Loayza Tamayo v. Peru. Merits*, para. 57, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 147.

269 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 165, and *Case of the Barrios Family v. Venezuela*, para. 82.

270 Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17. See also: Article 1 of the Convention on the Rights of the Child of November 20, 1989, entry into force on September 2, 1990, and ratified by Colombia on January 28, 1991.

271 The Court is not a higher or appeals court to decide the disagreements of the parties on the specific implications of the evidence or on the application of domestic law on aspects that are not directly related to compliance with international human rights obligations. *Cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of González Medina and family members v. Dominican Republic*, para. 38.

272 *Case of Nogueira de Carvalho et al. v. Brazil*, para. 80, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 65.

measures taken by the Prosecutor General's Office. The second version arises from the corresponding arguments submitted by the State that concur in part with the statements of several members of the Colombian Armed Forces who were present at the time of the events (*supra* para. 73), according to which the said cluster bomb was launched 500 meter to the north of the village and that the deaths and injuries that occurred resulted from the explosion of a car bomb, supposedly placed by the FARC.

196. Regarding the evidence provided, the Court observes, first, as did the 12th Criminal Court of the Bogotá Circuit in its judgment of September 24, 2009, that several inhabitants of Santo Domingo indicated that they were able to see how one of the Colombian Air Force helicopters that was in the area of the operation launched bombs in the middle of the village at around 10 a.m. that day, causing deaths and injuries among the civilian population.[273] This testimony is consistent with several investigative measures taken by the Prosecutor's Office.[274]

197. The Court observes that the film recorded by the Skymaster aircraft shows that, as of 10:00:40 a.m. the following conversation took place among the crews of the different aircraft that were flying over the area in relation to the launch of the AN-M1A2 device (in the text of the recording also referred to as "the cluster bomb" or "big gift").

> Lieutenant J.J.V. co-pilot if the UH1H (Owl): "Hunter, we need to launch the cluster bomb, Hunter, Owl needs to launch the cluster bomb."
> Lieutenant G.L., pilot of the Hughes–500 (Hunter): "Owl needs to launch the cluster bomb. Okay. Hawk and Harpy, hold, because here comes a big gift."
> Owl: "OK – show me where"
> Hunter: "OK, do you see the yellow road?"
> Owl: "Where do you want it, Hunter? Tell me where you want it!"
> Hunter: "To the right of the village there is a wooded area (*mata de monte*). We want it on the whiskey edge (west) of that wooded area."
> Owl: "The wooded area that is more to the whiskey or the one here, nearby?"

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273 *Cf.* Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012. Before the Court, Alba Yanet García stated the following: " […] a helicopter flew over us […] it stopped a little, and that is when it launched things at us; and I said 'the helicopter is throwing paper at us'; in that instant, before I had finished the sentence, I felt the explosion; I felt the impact; time stood still, in that moment I could not see anything; but people were around me screaming, calling for help; in that moment, I was so terrified that I fled, I tried to run; when I tried to run, my left arm would not respond, and then I saw that I was bathed in blood, my arm was almost hanging off; then I was even more afraid, terrorized, so I grabbed my arm and took refuge in a house that was nearby, which was the Santo Domingo pharmacy […]." Statement of María Panqueva, who said: "we were there, when I saw a bit of smoke, but it was already too late because we heard an enormous noise and that was when I looked […]." Testimony provided on December 21, 1998, before the 24th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 643 to 645); Statement made by Amalio Neite on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 654 and 655); Statement made by Luis Sel Murillo Villamizar of December 22, 1998, before the 12th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 650 to 652); Statement made by Nilsa Díaz Herrera on December 22, 1998, before the Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 647 and 648); Statement made by Adán Piñeros on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folio 657). Complaint filed by Ascención Daza Galindo on December 17, 1998, before the Tame municipal notary, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 496); Complaint filed by María Antonia Rojas before the Tame municipal notary on December 17, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 496 and 497), and Complaint filed by Carmen Edilia González before the Tame municipal notary, on December 18, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 497).

274 Likewise, Carmen Edilia González stated: "at about 10 a.m. the helicopters that were flying over the area launched bombs on the village and, as a result, the people who were on the highway and those that had stayed in their homes were hit by shrapnel from the bombs, and when [she] left her home her husband was dead, the child in her arms was also injured […]." Complaint filed by Carmen Edilia González before the Tame municipal notary, on December 18, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 497). Medical records (evidence file, tome 19, folios 9811 to 9931); Disciplinary Chamber of the Attorney General's Office, case file 161-01640 (155-45564/2000), December 19, 2002 (evidence file, tome 2, folios 610 and 611); Letter sent by the Tame (Arauca) municipal notary to the United Nations High Commissioner for Human Rights on December 14, 1998 (evidence file, tome 15, folios 7813 and 7814); Decision issued by the Colombian Military Forces, Air Force and the Special Military Criminal Investigation Unit on June 14, 2001 (evidence file, tome 2, folios 421 and 422), and Video of procedure of February 11, 2000 (evidence file, tome 19, folio 9620), and Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folios 350 and *ff.*).

Hunter: "The one nearby."[275]

198. In the same video it is possible to hear that at 10:02:09 a.m., one of those who intervened in the communications states: "Okay, it's away, its away!" referring to the AN-M1A2 device and at 10:02:11 a.m., another pilot says: "Yes, you can see the smoke over there."[276] However, although it is possible to see the "wooded area" where the bomb should have fallen according to the indications in the Skymaster image, it is not possible to see, in any part of the screen, the smoke that it is said is being observed. A few seconds later, at 10:02:49 a.m., when the filming angle of the Skymaster changes, it is possible to see in the upper right hand of the screen a column of dark smoke coming from the village of Santo Domingo, a column that could not be seen in the previous images (at 09:16:04, and 09:23:23, among other times).[277] At 10:02:50 a.m., the Skymaster pilot says in English: "it looks like there is a…"), a phrase that is interrupted and that is followed by a silence of more than 30 seconds, without it being possible to see the village again until several minutes later.[278] When the image returns to the village of Santo Domingo at 10:08:19 a.m., the column of smoke can no longer be seen.[279]

199. What can be seen in the images of the Skymaster video concurs with the conclusions of the judgment of the 12th Criminal Court which states that "it is possible to see in the very upper right hand of the screen a slanted image of the village with smoke,"[280] as well as the statements of inhabitants of Santo Domingo who recall having seen smoke after the bombs had fallen.[281] Similarly, these findings and testimonies are consistent with the technical appraisals performed in the inspection procedure carried out at the Apiay Base of the Colombian Air Force on August 12, 2003, when tests were carried out consisting in the launch of cluster devices similar to those used by the Air Force in Santo Domingo, in which it was possible to observe clearly dark smoke when the devices touched the ground.[282] The technical report following the said procedure reached the same conclusions.[283]

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275 In relation to the location of the "wooded area (*mata de monte*) which is very close by," see aerial photograph taken of the area of Santo Domingo and the wooded area (evidence file, tome 19, folio 10088 and 10089); Skymaster video of December 13, 1998, where it can be seen that this conversation was reported at 10 a.m. (evidence file, tome 19, folio 9621); Agustín Codazzi Institute, Sub-Directorate of Geography and Cartography, map to scale of 1:100,000 with the points and distances (evidence file, tome 19, folio 9945 and 9946), and Santo Domingo Operation Report, Special Air Operations Directorate, Colombian Military Forces, Air Force (evidence file, tome 19, folios 10122 to 10125). See also: 12th Criminal Court of the Bogotá Trial Circuit with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 2998).

276 Skymaster video of December 13, 1998, 10:02:09 a.m. until 10:02:11 a.m. (evidence file, tome 19, folio 9621).

277 *Cf.* Skymaster video of December 13, 1998, 09:16:04 a.m.; 09:23:23 a.m.; 10:02:49 a.m. (evidence file, tome 19, folio 9621).

278 *Cf.* Skymaster video of December 13, 1998, 10:02:50 a.m. and *ff.* (evidence file, tome 19, folio 9621).

279 *Cf.* Skymaster video of December 13, 1998, 10:08:19 a.m. (evidence file, tome 19, folio 9621).

280 Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10626).

281 Statement of María Panqueva, who said: "We were there, when I saw a bit of smoke, but it was already too late because we heard an enormous noise and that was when I looked […]." Testimony provided on December 21, 1998, before the 24th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 643 to 645); Statement of Luis Sel Murillo Villamizar: "I saw a big green helicopter […]; one could see two sort of cannons pointing forward, like tubes; one could see the tires; the helicopter was flying over the right-hand side of the village, and went I looked, a small stream of smoke flowed out of it going exactly to the spot where the explosion occurred; when the smoke hit the highway, it exploded; it fell on half the highway in front of the store owned by Mario Galvis […]; it was this explosion that killed 11 people instantaneously and injured others, some of whom died on the way, for a total of 17 people dead […]." Statement made by Luis Sel Murillo Villamizar on December 22, 1998, before the 12th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 650 to 652); Statement of Nilsan Diaz Herrera: "[…] it was a helicopter that had some structure on the sides, some tubes; it was big and black or green, it was always high […], I saw a stream of smoke that came down and almost at once there was an explosion; I just saw the wave of smoke that came down […]; the village is located on both sides of the highway and the bombs fell on the highway; one fell outside the village; another fell on the bonfire where the charity fair was being held, another on a truck and another on the highway; and it was the shrapnel from the explosions that killed people […]." Statement made by Nilsan Díaz Herrera on December 22, 1998, before the Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 647 and 648).

282 *Cf.* Inspection procedure conducted at the Colombian Air Force Base in Apiay (Meta), minute 1:01:45. National Human Rights and International Humanitarian Law Unit, Prosecutor General's Office, Case file No. 419 (evidence file, tome

200. Furthermore, as indicated by the 12th Criminal Court, and as can be inferred from the evidence presented, the Court has verified that, during the technical inspections and the investigation procedures,[284] shrapnel and fragments were found in the village and in the bodies of the deceased and the injured[285] corresponding to parts of the device that it is alleged was used by the Air Force in Santo Domingo. The State did not challenge the said findings, although it contested the fact that they were part of an AN-M1A2 device[286] or that, even if they were part of a similar device, they had been collected as probative material, respecting the corresponding chain of custody.[287] The Court underscores that these procedures were carried out by the domestic authorities themselves.

201. In this regard, the Court observes that these same objections were raised during the criminal proceedings,[288] so that, reiterating that it is not a criminal tribunal, in principle it is not incumbent on the Court to decide on the authenticity of evidence gathered during a domestic investigation, especially when this has been considered valid by the competent judicial system of justice. Consequently, this Court does not find that sufficient reasons exist to reject or invalidate

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17, folios 8849 to 8852). See also: Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10642).

283 *Cf.* Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, folios 21266 and *ff.*); Photographic report No. 128269 of Job number 554-2003, Prosecutor General's Office, Case file No. 419 (evidence file, tome12, folios 6072 to 6101); Inspection procedure conducted at the Colombian Air Force Base in Apiay (Meta) National Human Rights and International Humanitarian Law Unit, Prosecutor General's Office, Case file No. 419 (evidence file, tome 17, folios 8849 to 8852); Superior Court of the Bogotá Judicial District, Criminal Chamber, Judgment of June 15, 2011, deciding the appeal filed against the first instance judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folios 8456 and 8457), and Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folios 356 and 357, 364 and 365).

284 *Cf.* Video of procedure of February 11, 2000 (evidence file, tome 19, folio 9620), and Ballistics and explosives inspection and examination, expanded report of April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691), and Letter sent by the Tame (Arauca) municipal notary to the United Nations High Commissioner for Human Rights on December 14, 1998 (evidence file, tome 15, folios 7813 and 7814).

285 The report on the ballistics and explosives inspection and examination by the Prosecutor General's Office which established that "after comparing some of the fragments recovered during judicial inspections in Santo Domingo and during the autopsies of some of the victims of the explosions of December 13, 1998, with the pieces that constitute AN–M1A2 cluster bombs, the compatibility and correspondence of their morphology and dimensions was observed, specifically with the iron rib or rings that cover the body of this type of bomb longitudinally. Also other fragments of aluminum and brass recovered from the site of the events […] correspond to the head or nose of the AN–M1-A2 fuse […]." Ballistics and explosives inspection and examination, expansion of report, job number BA-0066/2000, April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9692; tome 2, folios 603 to 607).

286 According to the State's arguments, this conclusion was erroneous, because the difference between the sizes and forms of the craters located around the truck discount the possibility that they were caused by an AN-M1A2 device. In sum, according to the State, the videos of the different inspections made in Santo Domingo reveal that the characteristics of the two craters located around the vehicle are very different (merits file, tome 2, folios 437 and 438). As evidence, it provided: video of inspection procedure of December 18, 1998 (evidence file, tome 19, folio 9619); video of inspection procedure of December 28, 1998 (evidence file, tome 29, folio 9619), and video of procedure of February 11, 2000 (evidence file, tome 19, folio 9620). The State also argued that the appearance of the said craters around the red tuck does not coincide with the time at which the AN-M1A2 cluster bomb was dropped, because, at 7:15 a.m. on December 13, 1998, the Skymaster video shows a crater at the back of the red truck (merits file, tome 2, folio 440). As evidence it provided: Skymaster video of December 13, 1998, recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621), and photographs showing the villagers at 7:14 a.m. (evidence file, tome 19, folio 9588).

287 According to the State, the findings were obtained without observing the protocols for the chain of custody. There is no longer any certainty about their origin, and they could have been transported from anywhere in the village of Santo Domingo. It substantiates this by saying that they were provided 14 months after the events occurred (merits file, tome 2, folio 443).

288 In this regard, see Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folios 10581 to 10661) and Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folios 10717 and *ff.*).

the authenticity and validity of the said probative elements, particularly when, in the context of the proceedings held by Colombian justice, they were considered valid and authentic.[289]

202. The body of evidence reveals that, in its investigation, the Prosecutor General's Office identified six possible points of impact that could correspond to the six bombs that compose the cluster device, and that had fallen near the place where the victims were found.[290] As confirmed by the 12th Criminal Court and by the Superior Court, these points of impact would be consistent with the accounts given in the testimony of the inhabitants of Santo Domingo.[291] In this regard, the State argued that the points of impact: (i) were not compatible with the characteristics of a device of that type;[292] (ii) had not been caused, or had been caused at another moment,[293] and (iii) were not congruent with the evidence collected in relation to the position of the victims at the moment of the supposed launch (*infra* note 294).

203. On this aspect, the Court reiterates that the conclusions of the Prosecutor's Office were confirmed by the 12th Criminal Court and by the Superior Court of the Bogotá Judicial District and it finds no reasons to stray from what was decided at the domestic level on this point. Therefore, the Court does not find sufficient grounds to consider that the conclusions of the technical appraisals of the Prosecutor's Office are incongruent with the remaining evidence presented in this case.[294]

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[289] *Cf.* Judgment 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folios 10581 to 10661) and Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folios 10717 and *ff*.).

[290] According to the report on the ballistics and explosives inspection and examination by the Prosecutor General's Office: "based on the number of points of impact (six) indicated by the witnesses in Santo Domingo, the evidence collected at the site of the events, and the autopsies of the victims, it is concluded that these impacts or craters were produced by the six AN-M1A2 or AN-M158 bombs that are usually dropped from an aircraft with a cluster device." Ballistics and explosives inspection and examination, expansion of report, job number BA-0066/2000, April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folios 9689 to 9691).

[291] *Cf.* Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012; Statement of María Panqueva Testimony provided on December 21, 1998, before the 24th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 643 to 645); Statement of Amalio Neite, Testimony provided on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folios 654 and 655); Statement made by Luis Sel Murillo Villamizar of December 22, 1998, before the 12th Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 650 to 652); Statement made by Nilsa Díaz Herrera on December 22, 1998, before the Court of the Military Criminal Investigation Unit (evidence file, tome 2, folios 647 and 648), and Statement made by Adán Piñeros on December 16, 1998, before the Tame municipal notary (evidence file, tome 2, folio 657). See also: Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folios 10581 to 10661), and Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10777).

[292] In this regard, see merits file, tome 2, folios 437 and 438; video of the inspection procedure of December 18, 1998 (evidence file, tome 19, folio 9619); video of inspection procedure of December 28, 1998 (evidence file, tome 29, folio 9619); video of procedure of February 11, 2000 (evidence file, tome 19, folio 9620); Skymaster video of December 13, 1998, recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621), and photograph showing the villagers at 7:14 a.m. (evidence file, tome 19, folio 9588).

[293] In this regard, see merits file, tome 2, folios 437 and 438, and photograph showing the villagers at 7:14 a.m. looking at a crater near the red truck (evidence file, tome 19, folio 9588).

[294] Despite this, the Court observes that the objections made by the State with regard to the sites of the presumed impacts of the bombs that compose the cluster device are inconsistent with the rest of the evidence. In particular, it is relevant to underline that the maps of the areas of impact presented by the State in relation to the position of the victims at the time of the supposed launch, are disproved by the rest of the evidence. Thus, the video of the operation of December 18, 1998 (evidence file, tome 19, folio 9619) shows that the direction of impact of one of the craters identified in the Prosecution's map (point of impact "B" on the map of 11 February, 2000, Prosecutor General's Office, evidence file, tome 19, folio 10127) reveals shrapnel marks in direction from west to east (min. 10:43 and *ff.*); however, the State affirms, contrary to what the evidence indicates, that the path of the shrapnel was in the opposite direction, which allows it to conclude that it could not have affected the victims identified with the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 on the said map. Furthermore, the Court observes that there is no single opinion about the effects that the bombs of the AN-M1A2 device would have had, because according to the technical manual presented by the State, they have a maximum dispersion of 30 meters, while, in the procedure conducted in Apiay (*supra* para. 63), it was possible to observe that, following the launch of two similar devices, fragments from them were found at 100 meters around each crater. In addition, the Court observes that the technical manual forwarded by the State (*supra* para. 63), indicates that the effects of the bombs are different based on the angle at which they fall, indicating that when the angle is 84º, the dispersion of the fragments is different from the one produced with other inclinations (evidence file, tome 19, folio 10080). On this point, the

204. The State also presented as evidence to substantiate that there was no explosion of a cluster bomb the Skymaster video images that focus on the village in the moments following the launch at 10:08 a.m. (approximately 6 minutes after the launch of the AN-M1A2 device), where there is no sign of victims, bodies, craters or blood in the images.[295]

205. In this regard, the Court observes that, although it is true that, in the images of the village filmed at 10:08 a.m., the element indicated by the State are not seen clearly, it is possible to observe the following: (i) in the map presented by the State based on a drawing made by the Prosecutor's Office, representing the position of 24 of the victims (deceased and injured) at the time of the supposed impact of the six AN-M4IA1 fragmentation bombs,[296] only seven people are located in areas that are not covered by the roofs of the houses, so that it would be impossible to observe the other victims in the Skymaster image; (ii) some of the injured indicated that they remained in their homes after the presumed fall of the cluster bomb,[297] so that they could not have been filmed by the Skymaster; (iii) the map presented by the State also shows that some of the victims would have been near trees or vegetation,[298] which would make it difficult to see them in an aerial video; (iv) some injured or deceased victims were moved into the houses or to other places,[299] and (v) the Skymaster images, particularly at that time of the recording, are unclear and do not allow whether or not there are craters to be determined in detail.

206. In addition, regarding the version presented by the State, like the 12th Criminal Court and the Superior Court of the Bogotá Judicial District, this Court notes that the testimonies of the members of the Colombian Air Force are inconsistent about the place where the cluster bomb fell.[300] While some of them initially stated that no cluster bomb had been launched, other versions indicate that "the cluster bomb was dropped at 5 km., 4 km., 2 km., 1 km., 600 meters or 500 meters to the north of the village."[301] The testimony of Captain S.A.C.E. is also underscored. On December 13, 1998, he was in command of Dragon company, which was deploying on foot, and he

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Court observes that the State did not indicate why it considered that the bombs had all fallen at a 75º angle when, if the angle had differed, the scenario of the areas of impact presented by the State could have been different and possibly more consistent with the version accepted by the prosecutor in his investigations. Lastly, regarding the evidence presented by the State regarding the prior existence of one of the craters (*supra* note 295), the Court indicates that the Skymaster video images that were presented are neither clear nor conclusive enough to reach that conclusion.

295 In this regard, see merits file, tome 2, folio 452. The State alleges that, in the images taken of the village of Santo Domingo at 10:08 a.m. on December 13, 1998, in other words 6 minutes after the launch of the ANM1A2 device, there is no record of the supposed position of the deceased, a matter that detracts from the truth of the prosecutor's report. See also: Skymaster video of December 13, 1998 (evidence file, tome 19, folio 9621).

296 *Cf.* Map of February 11, 2000, Prosecutor General's Office (evidence file, tome 19, folio 10127). See also, Ballistics and explosives inspection and examination, expansion of the report, job number BA-0066/2000, April 28, 2000. Investigation No. 419 UNDH, Prosecutor General's Office (evidence file, tome 19, folio 9689 to 9692).

297 *Cf.* Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012. Alba stated that: "and then I saw that I was bathed in blood, my arm was almost hanging off; then I was even more afraid, terrorized, so I grabbed my arm and took refuge in a house that was nearby, which was the Santo Domingo pharmacy. I took refuge there, also with several of the injured […]."

298 "Giovanni Hernández, at the foot of the tree that is in front of the store […]." Record drawn up during the inspection procedure on February 11, 2000, Prosecutor General's Office (evidence file, tome 19, folio 9596), and map of February 11, 2000, Prosecutor General's Office (evidence file, tome 19, folio 10127).

299 In this regard, see el Affidavit of Hugo Fernelly Vargas. Testimony (evidence file, tome 50, folios 27993 and 27994) and Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folios 10780 and *ff*.).

300 *Cf.* Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folios 10613, and 10502 to 10506).

301 Judgment 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10614).

stated that he had not perceived the explosion of a cluster bomb in the wooded area.[302] To the contrary, all the testimony of the inhabitants of Santo Domingo is consistent to the contrary.[303]

207. Regarding the State's hypothesis that it was a homemade device placed in a red truck that had exploded and caused the deaths and injuries of the victims, the Court observes that the State did not specify the time at which it could have exploded. In this regard, the evidence provided by the State reveals that only a few minutes before 10 a.m. on December 13, the Skymaster image focuses on the red truck allowing it to be verified that, at that time, it was intact.[304]

208. However, in the images of the village at 10:08:10 a.m. and 10:17:22 a.m., the front part of the said truck appears to be damaged, which permits concluding that, if the State's version is correct, the supposed bomb in the truck could only have exploded at almost the same moment as the cluster bomb was launched; in other words, as verified, at 10:02:09 (*supra* para. 198), a hypothesis that, in addition to not being alleged by the State, would be such a coincidence that it would be improbable. Moreover, the videos did not record that the pilots had noted or visualized an explosion in the village other than the one recorded at 10:02:09.

209. Similarly, as indicated by the 12th Court in its first instance judgment, if the State's hypothesis were true, this would necessarily imply that all the victims had consciously presented versions of the facts that do not correspond to the reality, a conclusion that would not be reasonable.[305] In this regard, the said judgment underlined that this "runs counter to all the rules of experience," because it would mean "supposing that only a few hours after the violent death of their children, parents and siblings, in such an exceptional way as the explosion of a bomb, so many individuals undertook to incriminate an institution."[306]

210. Consequently, the Court concludes, taking into consideration the conclusions of the judgment of the 12th Criminal Court, confirmed by the Superior Court in its judgment of June 15, 2011, that the AN-M1A2 device launched at 10:02:09 a.m. on December 13, 1998, effectively fell on the main street of Santo Domingo, causing the death of 17 presumed victims and the injuries of another 27.

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211. Having established how the incident occurred, the Court will now examine the State's responsibility in the effects on the life and integrity of the victims of the bombardment. To this end, as indicated (*supra* para. 187), it will analyze the facts of the case interpreting the provisions of the American Convention in light of the pertinent norms and principles of international humanitarian law, namely: (a) the principle of distinction between civilians and combatants; (b) the principle of proportionality, and (c) the principle of precaution in attack.

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302 *Cf.* Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10782). See also: Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10535).

303 *Cf.* Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10605), and Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10777).

304 See, in this regard, the image of the red truck at 09:16:04 a.m.; 09:20:19 a.m.; 09:33:53 a.m., 09:34:41 a.m., 09:43:35 a.m. Skymaster video of December 13, 1998, recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621).

305 *Cf.* Judgment, 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10602).

306 Judgment 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 20, folio 10602). The judgment states that "in the case of Inés Yurelly Bello Tiliano, mother of Jorge Bello, 4 years of age, who, despite the distance she travelled to save his life because he was attended in Tame, Saravena and Arauca, subsequently died on the night of December 14, 1998, more than 36 hours after the [events] occurred […]. And, in these circumstances, it would be unusual that the mother would lend herself to an intrigue to conceal the real authors of the death of her loved one, because she did not indicate that her son's death had been the result of the explosion of a vehicle due to the actions of the guerrilla."

a) The principle of distinction between civilians and combatants

212. As established in international humanitarian law, the principle of distinction refers to a customary rule for both international and non-international armed conflicts which establishes that "[t]he parties to the conflict must at all times distinguish between civilians and combatants," that "attacks may only be directed against combatants" and that "[a]ttacks must not be directed against civilians."[307] In addition, customary international humanitarian law establishes that: "[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives," so that "[a]ttacks may only be directed against military objectives," while "attacks must not be directed against civilian objects."[308] Similarly, paragraph 2 of Article 13 of Protocol II Additional to the Geneva Conventions prohibits attacks being directed against civilians or the civilian population.[309] The jurisprudence of the international criminal courts has also referred to this principle.[310]

213. In the instant case, the Court has found proved that, in the context of confrontations with the FARC guerrilla, on December 13, 1998, the Colombian Air Force launched an AN-M1A2 cluster bomb on the village of Santo Domingo, causing the death and injury of civilians (*supra* para. 210). The Court takes note that the domestic judicial and administrative organs have considered that the State failed to comply with the principle of distinction when conducting the said airborne operation.

b) The principle of proportionality

214. As established by international humanitarian law, the principle of proportionality refers to a customary rule for both international and non-international armed conflicts that stipulates that "[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."[311] Thus the said principle establishes a limitation to the purpose of the war, stipulating that the use of force must not be disproportionate, limiting it to what is essential to obtain the military advantage pursued.[312]

215. In this regard, as already indicated, although the launch of the cluster bomb directly affected the population of the village of Santo Domingo, the more general military objective of the airborne operation was the members of the guerrilla who were presumably located in a wooded area near Santo Domingo. In this hypothesis, the military advantage that the Colombian Air Force hoped to obtain was to undermine the military capability of the guerrilla located in a place where, presumably, there was no civilian population that could be incidentally affected by the cluster bomb. Consequently, the Court considers that it is not appropriate to analyze the launch of the

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307 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge 2005, Rule 1.

308 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005, Rule 7.

309 Similarly, Rule 87 of customary international humanitarian law and Article 3 common to the four Geneva Conventions establish that "[c]ivilian persons and non-combatants shall be treated with humanity." Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge 2005, Rule 87.

310 *Cf.* The Criminal Tribunal for the former Yugoslavia (hereinafter also "ICTY"), Case file: IT-96-29/1-T. "The Prosecutor *v*. Stanislav Galic." Judgment of December 5, 2003. ICTY Trial Chamber, para. 57. See also, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, 13 June 2000, para. 29, and Report of the Commission of Inquiry on Lebanon pursuant to Resolution S-2/1 of the Human Rights Council, November 23, 2006, para. 25.

311 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005, Rule 14.

312 See Inter-American Commission, Third report on the situation of human rights in Colombia. Chapter IV, "Violence and violation of international human rights law and of international humanitarian law," doc. OEA/Ser. L/V/II.102. Doc. 9, rev. 1, of February 26, 1999, paras. 77 to 80. See also: Report of the Commission of Inquiry on Lebanon pursuant to Resolution S-2/1 of the Human Rights Council, November 23, 2006, para. 147, and Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, 13 June 2000, paras. 28, 48, 49 and 50.

said device in light of the principle of proportionality, because an analysis of this type would involve determining whether the deceased and injured among the civilian population could be considered an "excessive" result in relation to the specific and direct military advantage expected if it had hit a military objective, which did not occur in the circumstances of the case.

c) The principle of precaution in attack

216. According to international humanitarian law, the principle of precaution in attack refers to a customary rule for both international and non-international armed conflicts which establishes that "[i]In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects," and that "[a]ll feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects." [313] Similarly, rule 17 of customary international humanitarian law stipulates that "[e]ach party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects," and rule 18 indicates that "[e]ach party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[314]

217. Based on the evidence in the case file, the Court observes, first, as noted in the judgment of the 12th Criminal Court of the Bogotá Circuit,[315] and as revealed by the ballistic tests carried out in Apiay (*supra* para. 63) that the AN-M1A2 device, developed in the 1940s,[316] is not a precise weapon, [317] and its launch mechanism is operated manually by means of a cord that is pulled when the pilot gives the order.[318] In addition, it is worth recalling that the device is composed of six bombs (*supra* para. 63) that separate from the cluster when the device is launched,[319] and that this type of device falls due to the effects of gravity.[320] In this regard, as proved by the Apiay tests (*supra* para. 63), there can be differences of various dozens of meters between the points of

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313 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005, Rule 15.

314 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005, Rules 17 and 18.

315 *Cf.* 12th Criminal Court of the Bogotá Circuit. Judgment of September 24, 2009, p. 64 (evidence file, tome 2, folio 364).

316 *Cf.* Technical manual for the AN-M1A2 explosive device (evidence file, tome 19, folio 10074).

317 *Cf.* Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, 21284).

318 Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10800). "Regarding the manual launch of the device, carried out by H.A., […] it should be underlined that, based on the contribution of the procedural elements that were transcribed, his effort was limited to merely operating the safety mechanism that freed the cluster, on hearing the pilot C.R.P. say '*three, two, one, now*.'" See also: Video of the 2003 test at Apiay, minutes 38:55 to 40:12 (evidence file, tome 19, folio 9584). In the video, the procedure and the functioning of the device is explained and, also it can be seen that the device is located on the right; there are two phases in the launch of the device (first, the pilot says "ready' and the technician must respond saying "ready," then the pilot says "now"), then the technician must operate a red handle, which is the one that must be pulled in order to free the hooks that support the bomb.

319 *Cf.* Technical Manuals of the AN-M1A2 explosive device, p. 6 (evidence file, tome 19, folio 10056). See also: Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003, Procedure 419 (evidence file, tome 40, folio 21271).

320 *Cf.* Testimony of Captain R.G.G., Colombian Air Force pilot who took part in Operation "*Relámpago,*" before the National Human Rights and International Humanitarian Law Unit. Case file 419 of December 19, 2003 (evidence file, tome 12, folios 6139), and Statement made by el Captain L.R.Q. (Technical training commander and pilot of the Colombian Air Force) before the Attorney General's Office (evidence file, tome 12, folio 6168).

impact of each of the AN-M41A1 bombs of which it is composed.[321] Likewise, the Court cannot fail to note that the technical report on the said tests specifies that, when carrying out the ballistic tests with the AN-M1A2 devices, a point "for safe observation" had been located 250 meters from the anticipated point of impact" of the bombs. [322]

218. Regarding the imprecision of the weapon used, it should also be added that, as the 12th Criminal Court 12 observed in its first instance judgment, there is no certainty that the technician responsible for launching the device had visual contact with the village before he activated the device that freed the cluster bomb, and the evidence even allows the contrary to be presumed.[323] Indeed, as can be inferred from the judgment, the position occupied by the technician in order to fulfill his functions, made it impossible – in view of his location in the aircraft cabin – for him to visualize the objective indicated, contrary to the pilot and co-pilot, who could view the area. This allowed the 12th Criminal Court to conclude that the aircraft technician who carried out the launch did not see the village before he did so.[324]

219. Similarly, it is worth recalling, as did the first instance judgment of the 12th Criminal Court of the Bogotá Circuit, that the commander of the Apiay Base himself indicated, referring to the AN-M1A2 device, that "each cluster bomb […] can have a theoretical range of action of 150 meters depending on dispersion" and that "owing to the location very near the highway and residential area, it does not offer the necessary safety for this type of test," thereby explaining why the ballistic test planned for the year 2000 was not carried out.[325]

220. In addition, the Court notes that the 12th Criminal Court referred to the Colombian Air Force manuals and regulations in force on December 13, 1998, which the aircraft pilots "were obligatorily […] aware of."[326] In particular, it referred to the norms that regulated aerial support, as well as the launch of precision missiles ("alpha" missions) and bombardment missions ("beta" missions). Regarding the "alpha" mission, the 12th Criminal Court noted that the regulations established that they "are used as a weapon against specific objectives [and] despite being a weapon of great precision, their use is not appropriate in populated areas." As for "beta" missions, the norms indicated that they "should not be carried out in villages or areas where there is a civilian population."[327] Likewise, Permanent Directive NR 300–05 (1996) established that the "Air Force officer who commands the mission of aero-tactical support may suspend it if he realizes that the mission may cause damage to the civilian population or that the objective is located in a populated area."[328] Lastly, the same document, NR 16854/CGFM - EMCD3 - PO - 375 of August 8, 1998,

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321 For example, the report of the Apiay test indicates that there were distances of up to 54 meters between the impact points of two AN-M41A1 bombs from the same device. Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, 21286).

322 Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, folio 21267).

323 *Cf.* Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10806).

324 In this regard, as he himself indicated in the domestic criminal proceedings, "[…] the place where I sit in the back of the aircraft prevents me from having visibility towards the front [owing to] the position I am in." *Cf.* Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10807).

325 *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folios 6387 and 6388).

326 In this regard, the 12th Criminal Court of the Trial Circuit of Bogotá cited Permanent Directive NR 300–05 of 1996 entitled "General rules for airborne support to operations against domestic drug-trafficking and counterinsurgency," Directive 057 of July 23, 1997, No. 10 of the General Coordination Instructions; the document NR 16854/CGFM-EMCD3-PO-375 of August 8, 1998, signed by the General Commander of the Military Forces, and Permanent Directive 300-45 of September 3, 1998, concerning "General rules for airborne support to the Military Forces." 12th Criminal Court of the Bogotá Trial Circuit with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folios 6385 and 6386).

327 Directive 057 of July 23, 1997, No. 10 of the General Coordination Instructions, cited in 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6386).

328 Permanent Directive NR 300–05 of 1996 entitled "General rules for airborne support to operations against domestic drug-trafficking and counterinsurgency," cited in 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6385).

signed by the Commander-in-Chief of the Military Forces, established that "the pilots of Alfa missions (machine gun attacks), Beta (bombardments), Charlie (missiles) […] must remain in radio contact and receive clear instructions, based on easy-to-identify references" to facilitate execution of the mission."[329]

221. In addition, it is relevant to note, as did the Superior Court, that the use of explosive weapons launched from an aircraft constitutes an activity that it necessarily categorized as dangerous, and therefore should be executed under strict safety conditions that guarantee that only the selected objective will be harmed.[330]

222. Furthermore, according to the evidence presented, it could be considered that the designated objective for dropping the cluster bomb was not the place where it ended up falling. Indeed, the State argued that the bomb was directed at a wooded area 500 meters to the north of the village. However, it is also true that the reference that the pilot of the aircraft "Hunter" gave the aircraft "Owl" (the aircraft that executed the launch) does not refer to a precise distance, but merely indicates a "wooded area" that is "nearby" the village, on the right side (to the north) and specifying that they wanted the "cluster bomb" to fall to the west of this "wooded area" (*supra* para. 197). In addition, as the 12th Criminal Court also noted, a few minutes before the launch, the aircraft pilots indicated that the "wooded area" that was alongside the village began about 70 meters from it. [331] In its answering brief, the State contradicts itself as regards the distance to the selected military objective, because it indicated that "the military actions were directed […] against […] the 'wooded area' located 100 meters from Santo Domingo at the nearest point to one kilometer at the furthest."[332]

223. The foregoing allows the Court to conclude that the launch instruction was imprecise and, even though it indicated a "wooded area," it only clarified that it wanted "the cluster bomb" on the western side of it, without specifying at what distance from the village, so that the instruction could have been interpreted either that it was designating a point at 500 meters or at another nearer distance, which could even be 70 meters. Lastly, it is relevant to reiterate what the Superior Court of Bogotá observed when citing the testimony of Captain S.A.C.E, in which he emphasized that if the cluster bomb had been launched at the point indicated by the State (500 meters north of the village), "it would have been catastrophic for the men who were there."[333]

224. With regard to the other circumstances surrounding the events of December 13, 1998, the Court considers it relevant to mention that, some minutes before the cluster bomb was dropped, the Colombian Air Force had already committed one error by firing a precision missile on misinterpreting the orders received. In this regard, the conversation recorded by the Skymaster between 9:43 and 9:44 a.m. and cited by the judgment of the 12th Criminal Court is instructive because it reveals "the increasing momentum of the aerial operation" [334] in the moments prior to the launch of the cluster bomb:

> "Don't drop it there, don't drop it there, don't drop it there, don't drop it there, Hunter, don't drop it there […]. On the troops! You're firing on the troops. That's what you're doing; you're firing on the troops. […] Hunter, Hunter – Dragon. Go on, brother; you had to drop it along the whole highway and I told you to drop it more to the whiskey [west] of the highway, on the wooded area, brother. Ah, you've fucked up the soldier. What? You've fucked up the soldier! […] You stupid fool […] Hunter dropped it precisely on the highway; all

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329 Document NR 16854/CGFM-EMCD3-PO-375, of August 8, 1998, signed by the General Commander of the Military Forces, cited by the 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6385).

330 *Cf.* Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10797).

331 *Cf.* Skymaster video of December 13, 1998, 9:53:40 a.m. (evidence file, tome 19, folio 9621). See also: 12th Criminal Court of the Bogotá Circuit. Judgment of September 24, 2009, p. 45 (evidence file, tome 12, folio 6368).

332 Answering brief (merits file, tome 2, folio 500).

333 Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10783).

334 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6367).

the troops are located on the highway […] I told the idiot that he should drop it to the whiskey [west] and he dropped it all over the highway." [335]

225. The 12th Criminal Court also indicated in its first instance judgment that seconds before the launch of the device, the "intensity of the combat [was] evident as can be inferred from the speed of the conversation and the nervous words of those who spoke, to the point that, at 10:01:39 a.m., seconds before the launch, the Puerto Rican crew of Skymaster warned C.G. that there were a lot of aircraft, suggesting that more order should be established."[336]

226. Finally, in its second instance judgment, the Bogotá Superior Court referred to the testimony of Captain S.A.C.E., who stated that "[the airborne support was not necessary] because the ground conditions (vegetation) did not allow it."[337] This leads to the conclusion that the aircraft that launched the cluster bomb did not take the necessary care to consult the ground troops in order to find out if the bomb was needed to achieve the eventual effects on a military objective.

227. Consequently, based on all the above, the Court notes that: (i) the AN-M1A2 device used is a weapon with limited precision; (ii) the launch instruction was imprecise, having designated a launch area that could refer to an objective that it is unclear whether it was defined, because it could range from 70 meters from Santo Domingo to 500 meters further to the north; (iii) manuals and regulations were in force at the time of the events indicating that weapons such as the one used could not be used in populated areas or near villages with civilian population; (iv) the circumstances surround the events reveal that errors had already been committed with more precise weapons than the cluster bomb some minutes before 10.02 a.m.; (v) doubts existed about the need to use this type of weapon in the confrontations that took place on December 13, 1998, and (vi) a few seconds before the launch, one of the Skymaster pilots suggested the need to introduce some order among the aircraft, which denoted that there was a certain confusion in the airborne operation at that precise moment.

228. In addition to the above, it should be underlined that, neither from the evidence provided nor from the conversations between the pilots of the aircraft, can it be inferred that the fact that there was a village populated by civilians nearby was taken into account at any time during the operation; nor was the need expressed to take any kind of precaution or care when launching cluster bombs or other missiles in relation to the safety of the civilian population. To the contrary, the only concerns expressed by the aircraft pilots were in relation to the troops who were near the bridge.[338]

229. In any case, given the lethal capacity and limited precision of the device used, its launch in the urban center of the village of Santo Domingo or nearby, was contrary to the principle of precaution in attack.

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230. Based on all the above, this Court finds that the State is responsible for the violation of the right to life recognized in Article 4(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons who died in the village of Santo Domingo (*supra* para. 70 and *cf*. Annex I), as well as Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the persons who were injured on December 13, 1998 (*supra* para. 70 and *cf*. Annex II).

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[335] Skymaster video of December 13, 1998, 9:43:42 a.m. to 9:44:46 a.m. (evidence file, tome 19, folio 9621). See also: 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6367).

[336] 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6368).

[337] Superior Court of Bogotá, Criminal Chamber, Judgment of June 15, 2011 (evidence file, tome 20, folio 10782).

[338] In this regard, in the Skymaster video of December 13, 1998, at 09:43:55 a.m. (evidence file, tome 19, folio 9621), one of the pilots can be heard saying "*Oh!! There's the troop. That's what they're doing! […] smoke from the rocket, that's next to the troop.*"

B.3. The presumed machine gun attack

231. Regarding the presumed machine gun attack, as indicated above, there are two versions of the events. On the one hand, the State indicates that such actions against the civilian population did not occur and, on the other hand, the Commission and the representatives base themselves on the conclusions of the 12th Criminal Court and of the Superior Court of the Bogotá Judicial District,[339] on the conversations of the pilots recorded together with the Skymaster images, and on the testimony of several inhabitants of Santo Domingo.

232. As indicated previously *(supra* paras. 71 and *ff*.), the Court notes that, from the evidence provided and from the arguments, that there are two versions of what happened. Thus, the State alleges that the Air Force did not machine gun the civilian population or the village of Santo Domingo. However, the testimony of several inhabitants of the village of Santo Domingo are consistent in stating that, following the explosion of the cluster bomb, the Colombian Air Force machine-gunned those who were fleeing from Santo Domingo by the highway towards Tame from the aircraft. In addition, the testimonies are congruent with the conversations of the aircraft pilots that took place as of 10:10:33 a.m., referring to the persons who moving on the road, and which were recorded in the Skymaster video, in which it can be heard:

> *Skymaster* (10:10:33 a.m.) "No, no, don't fire, fuck, they're civilians" (10:10:59 a.m.) ¿Are they civilians?" "Yes, those are civilians"; (10:11:02 a.m.) "Jesus Christ, they're firing on civilians […] don't shoot […]," (10:11:11 a.m.) "This motherfucker shot civilians," (10:11:32 a.m.): "Don't fire you fucker; (10:11:57 a.m.) But, can they be civilians. He's going to shoot at civilians? (10:12:03 a.m.) You've got to speak to that guy; (10:12:04 a.m.) There are people on the highway, running, dressed in white; (10:17:04 am) They're running away, they've almost reach the cattle pen. I think that these are villagers also; they're civilians also who are fleeing."[340]

233. The said testimony of the inhabitants of Santo Domingo is also consistent with the conclusions reached by the 12th Criminal Court and the Bogotá Superior Court (*supra* paras. 109 and 113). Furthermore, the conversations among the aircraft pilots also reveal that they expressed their doubts about whether the people who were on the highway were civilians or members of the guerrilla.[341]

234. Regarding the principle of distinction between civilians and combatants, the Court recalls that, according to the norms of international humanitarian law indicated above (*supra* para. 212), conducts that constitute indiscriminate attacks are also prohibited "which employ a method or means of combat which cannot be limited as required by international humanitarian law […] and, consequently, […] are of a nature to strike military objectives and civilians or civilian objects without distinction."[342] Similarly, the case law of the International Criminal Tribunal for the Former Yugoslavia (hereinafter also "ICTY") has indicated that "indiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians," and that these "are expressly prohibited by Additional

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339 *Cf.* Superior Court of the Bogotá Judicial District, Criminal Chamber, Judgment of June 15, 2011, deciding the appeal filed against the First Instance Judgment, Reporting Judge: Luis Mariano Rodríguez Roa (evidence file, tome 16, folios 8414 and *ff.*; tome 19, 10717 and *ff.*).

340 *Cf.* Skymaster video of December 13, 1998, 10:17:04 a.m.; 10:12:03 a.m., and 10:11 a.m. (evidence file, tome 19, folio 9621).

341 See, for example, when one of the Skymaster pilots says to the other: "This is a job for the troops, because here we can't tell the civilians from the guerrillas, because they're not in uniform." Skymaster video of December 13, 1998, 10:53:42 a.m. (evidence file, tome 19, folio 9621).

342 Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005, Rule 12.

Protocol I [343] [and this] prohibition reflects a well-established rule of customary law applicable in all armed conflicts."[344]

235. In the instant case, the Court notes that, as can be heard in the recordings, the aircraft pilots expressed doubts as to whether or not the people they were observing moving on the highway towards Tame were civilians, and despite this they used their weapons (in this case machine guns), in manifest lack of concern for the life and integrity of these persons, and in non-compliance with the principle of distinction (*supra* para. 212). In addition, even in the hypothesis that there could be members of the guerrilla among the civilian population, the military advantage sought would not have been so great that it could justify eventual civilian deaths and injuries, so that, in that hypothesis, these actions would also have affected the principle of proportionality.

236. Lastly, the Court notes that the Colombian Air Force manuals and regulations in force at December 13, 1998 (*supra* para. 220), established clearly that machine gun attacks could only be used "in response to subversive attacks or seizure, when there is certainty that the civilian population will not be affected, [and] may never be used in populated or semi-urban areas,"[345] so that the machine gun attack also breached the principle of precaution in attack.

237. The Court notes that this action by members of the Colombian Air Force entailed a failure to comply with the obligation to guarantee the rights to life and personal integrity in the terms of the American Convention of the inhabitants of Santo Domingo, who were affected by the endangerment of their rights by the mere fact of having been the object of these indiscriminate attacks, irrespective of whether anyone was killed or injured. However, the representatives and the Commission did not individualize those who were the victims of these grave events, so that it is not incumbent on the Court to make a separate ruling in this regard.

B.4. The alleged violation of measures of protection in favor of the children

238. The Court has repeatedly stated that "both the American Convention and the United Nations Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of children that should serve […] to establish the content and scope of the general provisions defined in Article 19 of the American Convention."[346] Furthermore, in the context of non-international armed conflicts, the State's obligations in favor of children are defined in Article 4(3) of Protocol II additional to the Geneva Conventions, which stipulates that: "[c]hildren shall be provided with the care and aid they require, and in particular: […] (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated […].[347]

239. It should be recalled that the Court has indicated that "the special vulnerability, owing to their condition as children, is even more evident in a situation of internal armed conflict, […]

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343 Article 50 of the 1977 Protocol I Additional to the 1949 Geneva Conventions ("Definition of civilians and civilian population") establishes that: "1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. […]."

344 ICTY, Case file: IT-96-29/1-T. "The Prosecutor *v.* Stanislav Galic." Judgment of December 5, 2003. ICTY Trial Chamber, para. 57.

345 Directive 057 of July 23, 1997, cited by the 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 12, folio 6386).

346 *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 194, and *Case of Furlan and family members v. Argentina*, para. 125.

347 According to the International Committee of the Red Cross, this obligation has been defined as "[t]he parties in conflict must do everything possible to re-establish family ties; in other words, not only permit the searches undertaken by the members of the dispersed families, but also facilitate them." Commentary on Protocol II Addition to the 194 Geneva Conventions and relating to the protection of the victims of non-international armed conflicts. Section B. Family Reunion, para. 4553.

because they are least prepared to adapt or respond to this situation and, unfortunately, are those who suffer from its excesses disproportionately."[348]

240. In the instant case, the Court has found proved that, as a result of the events of December 13, 1998, in the village of Santo Domingo, six boys and girls died and another 10 were injured (*supra* para. 70), who had been seen by the aircraft pilots.[349] In addition to what has already been indicated, as will be seen below several children of Santo Domingo were forced to displace (*infra* para. 267).

241. Having analyzed the foregoing, the Court finds that the State failed to comply with its obligation to provide special protection to the children affected by the events of Santo Domingo, because it did not meet its special obligation of protection in the context of a non-international armed conflict. Consequently, the Court considers that the violations to the right to life and personal integrity declared previously must be understood in relation to the violation of Article 19 of the Convention to the detriment of the children who died, namely Jaime Castro Bello, Egna Margarita Bello Tilano, Luis Carlos Neite Méndez, Deysi Katherine (or Catherine) Cárdenas Tilano, Oscar Esneider Vanegas Tulibila and Geovany Hernández Becerra; and of the children who were injured, namely: : Alba Yaneth García Guevara, Marcos Aurelio Neite Méndez, Erinson Olimpo Cárdenas, Hilda Yuraime Barranco Bastilla, Ricardo Ramírez, Yeimi Viviana Contreras, Maryori Agudelo Flórez, Rosmira Daza Rojas, Neftalí Neite González and Lida Barranca.

B.5. The alleged violation of the right to integrity of the next of kin

242. In numerous cases, the Court has considered that the next of kin of the victims of human rights violations may, in turn, be victims.[350] In this regard, the Court finds it pertinent to clarify some aspects of its case law in relation to the determination of violations to the personal integrity of the next of kin of victims of certain human rights violations[351] or other persons with close ties to such victims.[352] Indeed, the Court considers that it can declare the violation of the right to mental and moral integrity of the direct family of victims of certain human rights violations applying a *iuris tantum* presumption with regard to mothers and fathers, daughters and sons, husbands and wives, permanent companions, and siblings (hereinafter "direct next of kin"), provided that this responds to the specific circumstances of the case.[353] In the case of these direct next of kin, it corresponds to the State to disprove this presumption. In the other scenarios, the Court must analyze whether the evidence in the case file proves a violation of the right to personal integrity of the presumed victim, whether or not the latter is a relative of any other victim in the case, in which case, it will assess, for example, whether there is a particularly close tie between them and the victims in the case that allows the Court to consider the violation of the right to personal integrity.[354] In the instant case, the Court observes that, according to an expert psychological opinion provided, the

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348 *Case of the Mapiripán Massacre v. Colombia*. *Merits, reparations and costs*, para. 156.

349 In the Skymaster video it is possible to hear that, at 08:39:18, one of the pilots of the aircraft distinguishes "around 40 people […] in civilian clothing" and adds "there are also children among them." After the bomb has been dropped, it is also possible to hear from the recording that, at different moments, children were identified among the inhabitants: at 10:14:37 a.m.; 10:19:00 a.m.; 10:19:09 a.m.; 10:25:22 a.m.; 10:27:44 a.m., and 10:33:06 am.

350 *Cf. Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 197, and *Case of the Mapiripán Massacre v. Colombia*. *Merits, reparations and costs*, para. 146. See also, *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*, para. 120; *Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph; *Case of Gelman v. Uruguay,* para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, para. 235.

351 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 119 and *Case of Blake v. Guatemala*. *Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114.

352 *Cf. Case of Valle Jaramillo et al. v. Colombia*, para. 119, and *Case of Trujillo Oroza v. Bolivia.* Reparations and costs. Judgment of February 27, 2002. Series C No. 92, para. 57.

353 *Cf. Case of Valle Jaramillo et al. v. Colombia*, para. 119, and *Case of the Barrios Family v. Venezuela*, para. 302

354 *Cf. Case of Valle Jaramillo et al. v. Colombia*, para. 119, and *Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114.

persons interviewed[355] had chronic post-traumatic stress symptoms which included: "(a) recurring thoughts of the events; disturbing memories that arise spontaneously; (b) a reaction of extreme anxiety to these thoughts and memories; (c) nightmares and other dreams that evoke the massacre; (d) spontaneous physical and emotional reactions in relation to aspects of daily life that are associated with the events of the massacre; reactions such as tachycardia, sweating, intense fear of the noise of a helicopter or airplane, or of gunfire; (e) sadness and grief when recalling the massacre; (f) insomnia; (g) perception of the harm as irreparable, impotence, feeling that life has totally changed, perception of an uncertain and stressful future."[356]

243. In addition to the above, the Court recalls that, as revealed by the evidence, the next of kin of the victims had to deal with the effects of the massacre of their loved ones.[357]

244. Based on the above, the Court finds that the State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victims of the events that occurred in Santo Domingo on December 13, 1998.[358]

B.6. The alleged failure to comply with Article 2 of the Convention

245. The Court recalls that Article 2 of the Convention obliges the States Parties to adopt, in accordance with their constitutional procedures and the provisions of the Convention, any legislative or other measures that are necessary to make the rights and freedoms protected by the Convention effective.[359]

246. In this case, the Court notes that although the representatives referred to the absence of an adequate legal framework that implements the obligation to protect human rights effectively in relation to the activities of multinational corporations on Colombian territory (*supra* paras. 55 and 185), they have not presented specific arguments or evidence that allows the activities of the multinational companies that operated in the area, or that had contracts with the Colombian Armed Forces to be linked to the violations declared with regard to the facts of the case; without prejudice to the events that the competent authorities must investigate (*supra* para. 163). Moreover, they did not argue clearly how an "adequate legal framework" concerning the activities of the multinational companies – which they did not explain in what it would consist – could have prevented the events of Santo Domingo. Consequently, it is not appropriate to analyze the facts in light of Article 2 of the Convention.

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355 The expert assessed 81 individuals. *Cf.* Psychosocial expert opinion of Dr. Ana Deutsch concerning the families, victims of the massacre of Santo Domingo. June 21, 2012 (evidence file, tome 50, folio 27610).

356 Psychosocial expert opinion of Dr. Ana Deutsch concerning the families, victims of the massacre of Santo Domingo. June 21, 2012 (evidence file, tome 50, folio 27606).

357 In this regard, Jorge Henry Vanegas Ortiz recounted: "I remember how I experienced that moment of the news of the death of my children; one does not even know what one does, because, when someone tells you that they have killed your children, this is an awful surprise. For some seconds, one is like a sleepwalker; one does not know what to do." Affidavit provided by Jorge Henry Vanegas Ortiz (evidence file, tome 50, folio 27933). In this regard, the testimony was mentioned of Carmen Edilia Gonzalez who recounted that, when she left her house after the bombardment, she found her husband dead. *Cf.* Complaint filed by Carmen Edilia Gonzalez before the Tame municipal notary, on December 18, 1998, cited in: Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folio 497); of Luis Sel Murillo Villamizar, who lost his only daughter, aged 5 (*cf.* Testimony of Luis Sel Murillo Villamizar before the 124th Military Criminal First Instance Court. December 21, 1998 (evidence file, tome 4, folio 1406); of Alicia Bello Tilano, who recalls that "[she ran] towards where she [had seen her] daughter [but] she was already dead" (sworn statement made by Alicia Bello Tilano before the Tame municipal notary on December 16, 1998 (evidence file, tome 4, folio 1419), and of Nilsan de Jesús Díaz Herrera, who recounted that she "thought that [her husband] was not there, but he was there […]. The only thing I did was to turn him over on his back; his skin became stuck to my hands, he was totally burned, full of holes, his arm destroyed; it was horrible." Affidavit provided by Nilsa de Jesús Díaz Herrera (evidence file, tome 50, folio 27985).

358 See Annex III.

359 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*, para. 51, and *Case of Furlan and family members v. Argentina. Preliminary objections,* para. 300.

B.7. Conclusions

247. Based on all the above, this Court determines that the State is responsible for the violation of the right to life, recognized in Article 4(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the persons who died[360] as well as the right to personal integrity, contained in Article 5(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons who were injured,[361] as well as of the next of kin of all of them, and of the right to measures of protection for children, recognized in Article 19 of the Convention, to the detriment of the children killed or injured in the course of these events.[362]

VII.3
RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE, AND RIGHT TO PROPERTY

A. Arguments of the Commission and allegations of the parties

A.1. Alleged violation of the right to freedom of movement and residence

248. The Commission concluded that the State had violated the right recognized in Article 22(1) of the Convention,[363] in relation to Article 1(1) thereof, to the detriment "of the population of Santo Domingo." Thus, the Commission indicated that "following the bombardment of December 13, and as a result of the terror that this caused in the population, the attacks on the survivors who tried to escape, and the destruction of their homes, all the inhabitants abandoned the village of Santo Domingo" and "moved to the village of Betoyes in the municipality of Tame, and to the towns of Tame and Saravena." It also specified that the population was displaced until January 1999. The Commission established in the Merits Report that the persons injured[364] and "the other inhabitants of the village of Santo Domingo that were displaced are victims of Article 22(1)."

249. The representatives added that the State had not complied effectively with the obligations of immediate protection; that the forced displacement caused by the massacre, together with the obligation to make integral reparation to the victims in relation to the violation of all the rights, imposed the need to establish judicial and administrative mechanisms for filing claims that were suitable, effective and that, above all, guaranteed the victims the real possibility of recovering their life in conditions of dignity and safety. The representatives considered that all the inhabitants of Santo Domingo were displaced.

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360 Namely: María Yolanda Rangel, Teresa Mojica Hernández, Edilma Leal Pacheco, Nancy Ávila Castillo (or Abaunza), Luis Orlando (or Levis Hernando) Martínez Carreño, Luis Enrique Parada Ropero, Salomón Neite, Arnulfo Arciniégas Velandia (or Calvo), Pablo Suárez Daza, Carmen Antonio Díaz Cobo, Rodolfo Carrillo, and the children: Jaime Castro Bello, Egna Margarita Bello Tilano, Luis Carlos Neite Méndez, Deysi Katherine (or Catherine) Cárdenas Tilano, Oscar Esneider Vanegas Tulibila and Geovany Hernández Becerra.

361 Namely: Edwin Fernando Vanegas Tulibila, Milciades Bonilla Ostos, Ludwing Vanegas, Gleydis Xiomara García Guevara, Mario Galvis Gelves, Fredy Monoga Villamizar (or Fredy Villamizar Monoga), Mónica Bello Tilano, Maribel Daza Rojas, Amalio Neite González, Marian Arévalo, José Agudelo Tamayo, María Cenobia Panqueva, Pedro Uriel Duarte Lagos, Ludo Vanegas, Adela Carrillo, Alcides Bonilla, Fredy Mora, and the children: Alba Yaneth García Guevara, Marcos Aurelio Neite Méndez, Erinson Olimpo Cárdenas, Hilda Yuraime Barranco Bastilla, Ricardo Ramírez, Yeimi Viviana Contreras, Maryori Agudelo Flórez, Rosmira Daza Rojas, Neftalí Neite González and Lida Barranca.

362 Children who died: Jaime Castro Bello, Egna Margarita Bello Tilano, Luis Carlos Neite Méndez, Deysi Katherine (o Catherine) Cárdenas Tilano, Oscar Esneider Vanegas Tulibila and Geovany Hernández Becerra. Children who were injured: Alba Yaneth García Guevara, Marcos Aurelio Neite Méndez, Erinson Olimpo Cárdenas, Hilda Yuraime Barranco, Ricardo Ramírez, Yeimi Viviana Contreras, Maryori Agudelo Flórez, Rosmira Daza Rojas, Neftalí Neite González and Lida Barranca.

363 Article 22(1) of the American Convention establishes that: "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. […]."

364 These persons were: Alba Yaneth García Guevara; Edwin Fernando Vanegas Tulibila; Milciades Bonilla Ostos; Ludwing Vanegas; Gleydis Xiomara García Guevara; Mario Galvis Gelves; Fredy Monoga Villamizar (or Fredy Villamizar Monoga); Mónica Bello Tilano; Maribel Daza Rojas; Amalio Neite González; Marian Arévalo; José Agudelo Tamayo; María Cenobia Panqueva; Pedro Uriel Duarte Lagos; Ludo Vanegas; Adela Carrillo; Alcides Bonilla and Fredy Mora. Also the children Marcos Aurelio Neite Méndez; Erinson Olimpo Cárdenas; Hilda Yuraime Barranco Bastilla; Ricardo Ramírez; Yeimi Viviana Contreras; Maryori Agudelo Flórez; Rosmira Daza Rojas; Neftalí Neite González and Lida Barranca.

250. For its part, the State argued that the attack, the terror, and the destruction of the homes were caused by the FARC guerrilla, and that the violation of the right to freedom of movement could be attributed to that group. It also indicated that "the displacement of the inhabitants of Santo Domingo cannot be attributed to the Armed Forces, which, under their obligations of guarantee and protection, planned a ground and airborne operation, in order to control public order and protect the civilian population," in which the operative orders established "that the Armed Forces [must] comply strictly with respect for human rights and international humanitarian law, and [must] treat the civilian population in a respectful, friendly and firm manner."

251. Likewise, the State indicated that, at the date of the facts, Law 387 (1997) was in force "based on which measures were adopted to prevent forced displacement, to consolidate and to provide attention, protection and socio-economic stabilization to the internally displaced owing to the violence in […] Colombia,"[365] and its implementation was coordinated by the then Social Solidarity Network, which undertook measures to strengthen the administrative mechanisms and entities that constituted the System for Integral Attention to the Displaced Population. In addition, the State asserted that, although the displacement was a *de facto* situation that had not been created by the Armed Forces, a series of actions had been taken in favor of the displaced: "(i) emergency humanitarian aid was provided to the population that moved from the district of Santo Domingo to the urban center of the municipality of Tame (Arauca); (ii) through its Armed Forces, [the State] took back control of the area, which allowed all the inhabitants to return one month after the events, and (iii) to ensure the sustainability of the return of the population, it signed and implemented a housing reconstruction and improvement project in the village." Lastly, in relation to the subsequent assistance provided to some of the presumed victims, the State indicated that "the beneficiaries included in the Single Register of Victims (RUV) were provided with comprehensive assistance through the Emergency Humanitarian Aid (AHE) component, as well as social programs for the displaced population," and that, "information in the National Information Network (RNI), reveals that the 11 individuals included in the RUV received humanitarian aid in accordance with their vulnerability, once or more."

A.2. Alleged violation of the right to property

252. The Commission concluded that the State had violated the right recognized in Article 21 of the Convention,[366] in relation to Article 1(1) thereof, to the detriment of the victims of the bombardment of Santo Domingo. It indicated that "owing to the limited precision and enormous anti-personnel force of cluster devices, the bombing of the village of Santo Domingo caused destruction to homes and properties in it," and that, in some of the homes, property was stolen or destroyed by soldiers who arrived in the village after the incident." When submitting the case to the Court, the Commission indicated that, "with regard to the identification of the victims of the violations of the rights to freedom of movement and residence and to property, because of the very nature of the facts of the case, [… it] was unable to obtain accurate information that would enable it to specifically name all [of them, … so that,] given the intrinsic characteristics of the violations established, as well as the displacement and its consequences, […it] gave special consideration in its merits report to the need to apply a broad understanding of the definition of victims." Regarding the right to property, in particular, the Commission considered that the State had violated that right to the detriment of 10 presumed victims who it identified, "among other surviving victims who lived in the village of Santo Domingo, and [whose] property was looted or destroyed and/or their homes damaged.

253. The representatives added that "owing to the enforced displaced caused by State agents, some families lost or suffered damage to their homes, possessions, crops and animals that provided their subsistence," and that "the inhabitants of Santo Domingo who had sustainable and stable living standards owing to their businesses had to undertake new employment activities,

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365 Law 387 of 1997 July 18). The Colombian Congress.

366 Article 21 of the Convention establishes that "1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. […]."

because they did not have the financial resources to, at least, reconstruct the property they had lost or recover their decent living conditions." The representatives also observed that "the looting and destruction were carried out by State agents who, as of December 14, 1998, exercised the military control of the area" and that "the International Red Cross went to the area that day and verified the presence of members of the National Army in the village."

254. For its part, the State argued that no causal relationship exists between the State's actions and the damage to property and belongings in Santo Domingo, and that the perpetrators of the acts and the damage to property were the members of the FARC who entered the village of Santo Domingo causing damage to the property of the civilian population. It added that, as could be observed in the video evidence, "six minutes after the launch of the bomb, the roofs of the houses remained intact [and that,] consequently, it cannot be asserted that the destruction of the houses was caused by the explosive device launched from the air." In addition, the State argued that "there is no evidence to prove with the required scientific rigor that the Armed Forces carried out acts of pillage, [and that] this is based, principally, on the ruling of the Attorney General's Office, an entity that acquitted the members of the Armed Forces of the supposed material damage caused." Lastly, it indicated that, both the video of December 16, 1998, and the video of December 28, 1998, reveal the presence in the village of Santo Domingo of members of the FARC and that they constitute evidence proving that the said armed group entered the houses to loot them.

B. Considerations of the Court

B.1. Freedom of movement and residence

255. This Court has indicated in its case law that the right to freedom of movement and residence established in Article 22(1) of the Convention is an essential condition for the free development of the individual.[367] In this regard, by an evolutive interpretation of Article 22 of the Convention, taking into account the applicable norms of interpretation and in accordance with Article 29(b) thereof, the Court has considered that this provision also protects the right not to be displaced forcibly within a State Party to the Convention.[368]

256. The Guiding Principles on Internal Displacement issued by the Representative of the Secretary-General of the United Nations in 1998,[369] based on international human rights law and international humanitarian law, are of particular relevance for the instant case. The Court considers that several of the guidelines allow the content and scope of Article 22 of the Convention to be incorporated into the context of internal forced displacement.

257. In the instant case, the Commission and the representatives argued that the State had violated the said provision because the inhabitants of Santo Domingo were forced to displace within the municipality or the region.

258. The Skymaster video presented as evidence by the State reveals that the displacement began during the early hours of the morning.[370] The video shows several villagers walking on the main highway from the village of Santo Domingo in the direction of Tame. Likewise, in this video, it is possible to observe that the displacement increased as of 10 a.m., following the launch of the

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[367] *Cf. Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 186; *Case of Ricardo Canese v. Paraguay*. *Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 115, and *Case of the Ituango Massacres v. Colombia*, para. 206. Similarly see, United Nations, Human Rights Committee, General comment No. 27 of 2 November 1999, paras. 1, 4, 5 and 19.

[368] *Cf. Case of the Mapiripán Massacre v. Colombia*. *Merits, reparations and costs*, para. 188, and *Case of the Massacres of Río Negro v. Guatemala*, para. 172.

[369] *Cf.* United Nations, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to resolution 1997/39 of the Commission on Human Rights, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998.

[370] *Cf.* Skymaster video of December 13, 1998 (07:21 a.m.; 07:38 a.m.; 07:42 a.m.; 08:39 a.m.; 09:16 a.m. to 09:36 a.m.; 09:49 a.m.), recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621).

cluster bomb on the civilian population of Santo Domingo,[371] to such an extent that, at 10:36, one of the pilots, observing the movement of people on the highway, commented that what was being seen was that "the whole village is leaving."[372] The displacement of the villagers was also noted in the first instance judgment of the 12th Criminal Court that convicted the Colombian Air Force pilots. [373]

259. This is confirmed by the testimony of several of the Santo Domingo villagers presented by the Commission and the representatives.[374] In this regard, Nilsa de Jesús Díaz Herrera stated that, "[a]fterwards, [they] took refuge in a shelter (*internado*), on the road to Villavicencio; [they] were there for about 20 days [and they] were provided with food."[375] The testimony of Monica Alicia Bello Tilano is also significant; she recounted that "Santo Domingo was left empty, because the people were afraid to return."[376]

260. Similarly, the State presented evidence that includes testimony referring to the displacement of the inhabitants of the village.[377] In this regard, one of them declared that he "had to leave Santo Domingo because, on December 13, 1998, some Army helicopters arrived and bombed the village […]; owing to the bombs, [their] house was left like a sieve and [they had] to abandon everything."[378] In this regard, the Court notes that the large number of displaced persons[379] was denounced by then Colonel S.A.G.V.[380] His denunciation also referred to the fear and terror

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[371] *Cf.* Skymaster video of December 13, 1998 (10:08 a.m.; 10:09 a.m.; 10:11 a.m.; 10:17 a.m.; 10:18:22 a.m.; 10:18:58 a.m.; 10:19 a.m., and 10:42 a.m.) recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621). Public denunciation and declaration of the town hall meeting in the municipality of Tame, December 17, 1998 (evidence file, tome 15, folio 7681), and Newspaper article: *El Tiempo*, "*Éxodo a Tame por combates*", December 15, 1998 (evidence file, tome 14, folio 7341). See also, newspaper article: *El Espectador*, *"Santo Domingo será Reconstruido"*, judicial news, p. 9-A, December 26, 1998 (evidence file, tome 14, folio 7360, and tome 16, folio 8227), and Decision of the Special Military Criminal Investigation Unit of June 14, 2001 (evidence file, tome 2, folios 422 and 423).

[372] *Cf.* Skymaster video of December 13, 1998 (10:36 a.m.) recording the operation carried out by the Air Force (evidence file, tome 19, folio 9621).

[373] *Cf.* 12th Criminal Court of the Trial Circuit of Bogotá D.C. with functions under Law 600 of 2000, First Instance Judgment, Case file 2005-102, September 24, 2009 (evidence file, tome 2, folio 346).

[374] *Cf.* Testimony of Giovanni Díaz Cobo, who stated that: "[i]n Beyotes, we were displace for seven days and the people said that we could go back then and we felt a great emptiness." Giovanni Díaz Cobo, affidavit (evidence file, tome 50, folio 27965). Similarly, Alba Yanet García declared during the public hearing that: "Everything changes completely; because nothing could be the same, just because we had to leave Santo Domingo, to leave behind my family; I left because I could not live in Santo Domingo, my memories of the place are the same after almost 14 years. I had to leave and deal with another world; all of us in Santo Domingo were peasants; I had to displace to the town and deal with different things; did not have the friends to support me like before, had to live with my memories. It was difficult; very difficult; it has been extremely difficult." Statement of Alba Yanet García during the public hearing of June 27 and 28, 2012.

[375] *Cf.* Testimony of Nilsa de Jesús Díaz Herrera. Statement made by affidavit (evidence file, tome 50, folio 27987).

[376] Statement of Mónica Alicia Bello Tilano. Statement made by affidavit (evidence file, tome 50, folio 28028).

[377] See also the following testimony: "… on December 13, 1998, there was a confrontation between the guerrilla and the Army, the helicopters bombed the village of Santo Domingo […] and since it was so frightening, we all left with the injured and the dead and we left everything … ." And also: "[…] on December 13, 1998, an Army aircraft came and began to drop bombs and all the people and everyone fled […] and we left there that day; that day the people all left there; those who had a home were left homeless." The Unit for Integral Attention and Reparation to the Victims, transcribed the paragraphs of the statements, but kept the identity of the deponents confidential in keeping with article 15 of the Colombian Constitution. Note of the Unit for Integral Attention and Reparation to the Victims, of July 19, 2012 (evidence file, tome 51, folio 28053).

[378] Note of the Unit for Integral Attention and Reparation to the Victims, of July 19, 2012 (evidence file, tome 51, folio 28053). The Unit for Integral Attention and Reparation to the Victims, transcribed the paragraphs of the statements, but kept the identity of the deponents confidential in keeping with article 15 of the Colombian Constitution.

[379] According to the Secretary of government of the municipality of Tame: "[a]t least 200 people have abandoned the settlements and villages near Santo Domingo and have arrived here seeking the Government's protection and safety for their children. The displaced have left the combat zone in trucks fleeing from the armed conflict." Newspaper article: *El Espectador,* "*La Fuerza Aerea Colombiana dice que no hubo bombardeos,*" December 15, 1998 (evidence file, tome 14, folio 7354; tome 16, folio 8226).

[380] According to then Colonel S.A.G.V.: "At around 11 a.m. I saw that more than 100 civilians were walking rapidly towards Tame on the highway, and the trucks picked up people hastily; it was as if they were afraid […]." Attorney General's Office, National Special Investigations Directorate, Human Rights Unit. Record made on the occasion of the procedure of the free and spontaneous statement made by S.A.G.V. on April 30, 1999 (evidence file, tome 16, folio 8221).

experienced by the inhabitants of Santo Domingo who were displaced. The Court also observes that some of the pilots of the different aircraft that were flying over the area were able to observe the displacement of the population of Santo Domingo.[381]

261. The Mayor of the municipality of Tame, together with a commission from the Office of the Ombudsman and the Ministry of the Interior, visited Santo Domingo on December 16, 1998, and corroborated that the inhabitants of the village had been displaced, because there was no civilian population in Santo Domingo that day.[382] This shows, and the State has not contested it, that the village was uninhabited after the events of December 13.[383]

262. The Court assesses the State's assertion, which has not been contested, that "as soon as the incident and the subsequent displacement occurred, the Governor of the department of Arauca at the time summoned a meeting of the Cabinet and delegated an official from the Government Secretariat to deal with the situation directly. The latter went immediately to Tame and, in coordination with the Mayor of this municipality, provided the initial emergency humanitarian aid to the population that had displaced from Santo Domingo. Furthermore, the emergency humanitarian aid was extended for 20 days after December 13, 1998, and in addition to food, included accommodation and clothing."[384]

263. Regarding the foregoing, the State argued that "measures were adopted for the reconstruction of Santo Domingo" and "to ensure the sustainability of the return of the population, it signed and implemented a housing reconstruction and improvement project in the village." Also, in relation to the safety conditions for the return of the displaced, the State indicated that "after it had repelled the permanent attacks of the FARC, on December 17, 1998, the Army occupied and secured the area, so that the persons who left their homes could return safely to Santo Domingo." It added that, according to "the statements of the deponents, the process of return to the village took no longer than one month from the date on which the events occurred."

264. In this regard, the Court appreciates the fact that the State provided help and support to some of the displaced and their next of kin, namely: Deicy Damaris Cedano[385], Nilsan de Jesús Díaz Herrera,[386] and 11 persons who are included on the Single Register of Victims. Also, the return of safe conditions in Santo Domingo ensured by the national Army, added to the reconstruction of the houses,[387] were important elements to allow some of those who were displaced to return to Santo Domingo starting in January 1999.[388]

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381 In this regard, at 10:18:19 a.m., the Skymaster pilot indicated: "looks to me like the civilians are fleeing town […]." Also, at 10:18:59 a.m. the Skymaster pilot says: "Those are the civilians who are fleeing town." Then at 10:36:40 a.m. the Skymaster pilot says: "The whole town is leaving […]", and finally, at 10:52:06 a.m. the Skymaster pilot says: "There's no one in the village; everyone has left." Skymaster video of December 13, 1998 (evidence file, tome 19, folio 9621).

382 *Cf.* Tame Mayor's Office, department of Arauca, December 29, 1998, answer to questionnaire of December 22, 1998, sent by the 12th Military First Instance Court to the Mayor of Tame (evidence file, tome 16, folios 8273 and 8274).

383 *Cf.* Tame Mayor's Office, department of Arauca, December 29, 1998, answer to questionnaire of December 22, 1998, sent by the 12th Military First Instance Court to the Mayor of Tame (evidence file, tome 16, folio 8273 and 8274); Inspection procedure carried out by the 124th Court of the Military Criminal Investigation Unit in Santo Domingo, on December 17, 1998, taken from: Decision of the Criminal Investigation Unit of June 14, 2001, p. 164 (evidence file, tome 2, folio 547); Video of the procedure of December 17, 1998 (min. 19:08), recording the first inspection made in the village of Santo Domingo (evidence file, tome 20, folio 10175), and See also: Record of December 28, 1998, Inspection procedure (evidence file, tome 19, folio 9570).

384 Nilsa de Jesús Díaz Herrera, statement made by affidavit (evidence file, tome 50, folio 27987).

385 *Cf.* Deicy Damaris Cedano, statement made by affidavit (evidence file, tome 50, folio 27979).

386 *Cf.* Nilsa de Jesús Díaz Herrera, statement made by affidavit (evidence file, tome 50, folio 27987).

387 *Cf.* Inter-institutional cooperation agreement No. 0499 between the department of Arauca and the Araucan Development Institute, in order to relocate, reconstruct and improve the 47 houses in Santo Domingo, dated December 31, 1999 (evidence file, tome 51, folios 28033 to 28037). See also, newspaper article: *El Espectador*, *"Santo Domingo será Reconstruido,"* Judicial news p. 9-A, December 26, 1998 (evidence file, tome 14, folio 7360; tome 16, folio 8227).

388 *Cf.* Rusmira Daza Roja, statement made by affidavit (evidence file, tome 50, folio 28021); Mario Galvis Gelves, statement made by affidavit (evidence file, tome 50, folio 27941), and Milciades Bonilla, statement made by affidavit (evidence file, tome 50, folio 28006).

265. Nevertheless, the Court notes that, although the representatives argued the violation of Article 22 in relation to all the inhabitants of Santo Domingo, it is also true that the Commission only identified and individualized as presumed victims those persons injured during the bombardment with the cluster bomb. The Court also notes that, in the context of these contentious proceedings, the representatives and the Commission have referred to 200 or 300 displaced persons without individualizing them.

266. Regarding the foregoing, the Court observes that the failure to identify all the persons who were displaced is partly due to the circumstances in which the facts of the case occurred and the profound fear felt by the inhabitants of the village of Santo Domingo (*supra* para. 243). This makes it impossible to know with certainty how many people were displaced in this case. As indicated previously,[389] the Court notes that many other villagers faced this situation but were not individualized by the Commission or the representatives, so that this situation can only be assessed in relation to those who have been identified in these proceedings as injured victims, without prejudice to the measures that the State must adopt at the domestic level with regard to the other displaced persons.

267. In conclusion, the persons who survived the events that occurred in Santo Domingo on December 13 and 14, 1998, were forced to leave their usual place of residence until approximately January 1999. In this regard, the Court observes that the situation of internal forced displacement faced by the victims who had been injured and their next of kin resulted from the explosion of the cluster bomb in the village of Santo Domingo (*supra* para. 210), added to the fear and the psychological effects of the nearby confrontations, as well as the machine gun attack (*supra* para. 243).

268. The State is responsible for the violation of Article 22(1) of the Convention, in relation to Articles 5(1) and 1(1) thereof, with regard to Edwin Fernando Vanegas Tulibila; Milciades Bonilla Ostos; Ludwing Vanegas; Gleydis Xiomara García Guevara; Mario Galvis Gelves; Fredy Monoga Villamizar (o Fredy Villamizar Monoga); Mónica Bello Tilano; Maribel Daza Rojas; Amalio Neite González; Marian Arévalo; José Agudelo Tamayo; María Cenobia Panqueva; Pedro Uriel Duarte Lagos; Ludo Vanegas; Adela Carrillo; Alcides Bonilla and Fredy Mora. Also the children, Alba Yaneth García Guevara; Marcos Aurelio Neite Méndez; Erinson Olimpo Cárdenas; Hilda Yuraime Barranco; Ricardo Ramírez; Yeimi Viviana Contreras; Maryori Agudelo Flórez; Rosmira Daza Rojas; Neftalí Neite González and Lida Barranca.

B.2. Right to property

269. In its case law, the Court has developed a broad concept of property that covers, among other aspects, the use and enjoyment of "property," defined as material goods that can be obtained, as well as any right that can form part of a person's net worth. This concept includes all movable and immovable property, corporal and incorporeal elements, and any other non-pecuniary object of value.[390]

270. As already indicated (*supra* para. 25), in the instant case, the Court finds it useful and appropriate to interpret the scope of Article 21 of the American Convention using other international treaties, such as the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), and the pertinent provisions of customary international humanitarian law.

271. In this way, Rule 7 of customary international humanitarian law establishes that international humanitarian law stipulates that: "[t]he parties to the conflict must at all times distinguish between

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389 *Cf.* Rusmira Daza Roja, statement made by affidavit (evidence file, tome 50, folio 28021); Mario Galvis Gelves, statement made by affidavit (evidence file, tome 50, folio 27941), and Milciades Bonilla, statement made by affidavit (evidence file, tome 50, folio 28006).

390 *Cf. Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 179, and *Case of Ivcher Bronstein v. Peru*. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74, para. 122. Similarly see: *Case of the Ituango Massacres v. Colombia*, para. 174.

civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects."[391]

272. Regarding the looting, the Court also observes that the said act is expressly prohibited by Article 4(2)(g) of Protocol II of 1977 and that appropriating property in the context of an armed conflict without the consent of its owner is an act prohibited by humanitarian law.[392] In addition, the Court recalls that the ICTY has indicated in its case law that this crime is committed when there is an intentional and unlawful appropriation of public or private property,[393] and that "the acts of plunder must involve great consequences for the victims. This will be the case when the property is of sufficient monetary value, or when property is appropriated from a large number of people, in which case the scale and the overall impact of the acts of looting will amount to a serious violation of the laws and customs of war." [394]

273. In addition, the Court has considered that, owing to the circumstances in which the events took place, and especially owing to the socio-economic conditions and vulnerability of the presumed victims, the damage caused to their property may have a greater effect and significance than that caused to other persons or groups under other conditions. In this regard, the Court finds that the States must take into account that groups of people who live in poverty face an increased degree of harm to their rights, precisely due to their situation of greater vulnerability.[395]

274. In this case, the Court has considered proved that, after the inhabitants of Santo Domingo had to abandon their homes and displace as a result of the events of December 13, 1998, looting occurred in some of the homes and stores in Santo Domingo as well as damage and destruction of property and possessions (*supra* para. 79).

275. Regarding the looting in the village, the Court observes that the representatives and the Commission argue that the Colombian Army is responsible for this, based on the testimony of the inhabitants of Santo Domingo.[396] On the other hand, the State maintains that those responsible for

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391 In addition, the rules of customary international humanitarian law relevant to this case include: "Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. Rule 9. Civilian objects are all objects that are not military objectives. Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives**.**" Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International humanitarian law,* volume I, rules, ICRC, Cambridge, 2005.

392 According to customary International humanitarian law, the following is a customary rule for international and non-international armed conflicts: "Rule 52. Pillage is prohibited". See: Henkaerts, Jean – Marie, Doswald – Beck Louise, *Customary International Humanitarian Law,* volume I, rules, ICRC, Cambridge, 2005, p. 182.

393 *Cf.* International Criminal Tribunal for the former Yugoslavia, *case of Kordic and Cerkez,* Appeals Chamber, December 17, 2004, para. 84, and *case of Naletilic and Martinovic*, Trial Chamber, 31 March 2003, para. 612.

394 International Criminal Tribunal for the former Yugoslavia, *case of Simic, Tadic and Zaric*, Trial Chamber, 17 October 2003, para. 101.

395 *Cf. Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012 Series C No. 249, para.204.

396 *Cf.* Colombian Military Forces. Air Force. Military Criminal Investigation Unit. Record of testimony provided by Olimpo Cárdenas. Tame (Arauca) December 28, 2000 (evidence file, tome 15, folio 7890). See also: Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record of the statement made by Wilson García Reatiga, Tame (Arauca), June 17, 1999 (evidence file, tome 4, folio 1492); Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record made of the statement made by Luis Sel Murillo Villamizar, Tame (Arauca) June 19, 1999 (evidence file, tome 4, folio 1415); Testimony of Luis Sel Murillo provided on December 21, 1998, before the 24th Military First Instance Court, pp. 2 and 3 (evidence file, tome 4, folio 1406); Testimony of Jaime Rojas in newspaper article: *El Tiempo*, "*Dos historias distintas de un mismo ataque*", December 17, 1998 (evidence file, tome 14, folio 7353); Attorney General's Office. General Directorate for Special Investigations. Human Rights Unit. Record of the statement made by Martin López Trigos. Tame (Arauca) June 19, 1999 (evidence file, tome 16, folios 8269); Attorney General's Office. General Directorate for Special Investigations. Human Rights Unit. Record of the statement made by Luz Claudelina Estrada Chavez. Tame (Arauca) June 17, 1999 (evidence file, tome 4, folios 1509 and *ff.);* Testimony of the victim Mario Galvis Gelves of June 12, 2012, in statements made by affidavit (evidence file, tome 50, folio 27941); Testimony of victim Lucero Talero Sánchez of June 6, 2012, in statements made by affidavit (evidence file, tome 50, folios 27952 and *ff.*), and Testimony of victim Hugo Fernely Pastrana Vargas, in statements made by affidavit (evidence file, tome 50, folios 27993 and *ff.*).

the looting were members of the FARC, citing the following evidence: (i) the Skymaster video of December 16, 1998;[397] (ii) the video of the inspection carried out on December 28, 1998,[398] and (iii) the decision of October 2, 2002, of the Disciplinary Delegation for the Defense of Human Rights concerning the looting.[399]

276. With regard to the foregoing, the Court notes that, although the testimony of the inhabitants of Santo Domingo indicated that the members of the Army "[had] rob[bed] everything that was there," referring in particular to "clothes [and] belongings," even the "theft of hens,"[400] this is not based on direct observation of the acts. The only eyewitness evidence presented by the representatives consists in two statements by inhabitants of Santo Domingo indicating that soldiers had entered some homes, including that of Margarita Tilano, and had consumed products from her store, specifically tomatoes, beer and soft drinks.[401] On the other hand, the Court observes that evidence has been presented indicating that members of the FARC guerrilla were present in Santo Domingo on the days following the events of December 13, 1998.[402]

277. Therefore, the evidence provided does not allow the Court to conclude definitively that the only combatants present in the village after December 13, 1998, were members of the Colombian Armed Forces. Consequently, there is insufficient evidence to consider the State responsible for the looting and destruction that is attributed to it by the Commission and the representatives. It should also be recalled that the decision of the Disciplinary Delegation for the Defense of Human Rights of October 2, 2002, concerning the acts of looting underscores that "the rules of experience [indicate] that the members of the Armed Forces have no interest in appropriating veterinary medicines or serums, [and that] this is characteristic of the subversives or of common criminals."[403] Likewise, the Court observes that the nature and importance of the property reported as stolen (veterinary medicines, heaters, gas cylinders, dishes, clothes, cooking utensils, electric appliances, tape recorders, audio equipment, zinc roof tiles) could be more consistent with the State's hypothesis.

278. Finally, although it is possible to conclude from the testimony of the community's teachers who were in Santo Domingo on December 14, 1998, together with the Red Cross, that members of the Army had taken the tomatoes, beer and soft drinks (*supra* para. 276), the Court also notes that the said acts do not involve serious consequences for the victims.

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397 *Cf.* Video of December 16, 1998 (evidence file, tome 19, folio 9622), when at 08:07 a.m. the presence of FARC in the village is recorded.

398 *Cf.* Video of inspection procedure of December 28, 1998 (evidence file, tome 19, folio 9619), which, at minute 04:03, shows graffiti alluding to the FARC illegal armed group on the walls of the homes.

399 *Cf.* Attorney General's Office. Special Disciplinary Commission, decision of October 2, 2002. Case file 155-45564-00 (evidence file, tome 20, folios 10409 and *ff.*).

400 Colombian Military Forces. Air Force. Military Criminal Investigation Unit. Record of statement made by Olimpo Cárdenas. Tame (Arauca) December 28, 2000 (evidence file, tome 15, folio 7890). See also: Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record of the statement made by Wilson Garcia Reatiga, Tame (Arauca), June 17, 1999 (evidence file, tome 4, folio 1492); Attorney General's Office National Special Investigations Directorate Human Rights Unit, Record of the statement made by Luis Sel Murillo Villamizar, Tame (Arauca) June 19, 1999 (evidence file, tome 4, folio 1415); Testimony of Luis Sel Murillo provided on December 21, 1998, before the 24th Military First Instance Court, pp. 2 and 3 (evidence file, tome 4, folio 1406), and Testimony of Jaime Rojas in newspaper article: *El Tiempo,* "*Dos historias distintas de un mismo ataque*", December 17, 1998 (evidence file, tome 14, folio 7353).

401 *Cf.* Attorney General's Office. General Directorate for Special Investigations. Human Rights Unit. Record of the statement made by Martin López Trigos. Tame (Arauca) June 19, 1999 (evidence file, tome 16, folios 8269). See also: Attorney General's Office. General Directorate for Special Investigations. Human Rights Unit. Record of the statement made by Luz Claudelina Estrada Chavez. Tame (Arauca) June 17, 1999 (evidence file, tome 4, folios 1509 and *ff.*).

402 *Cf.* Video Inspection procedure del December 28, 1998 (evidence file, tome 19, folio 9619), which, at minute 04:03 shows graffiti alluding to the FARC illegal armed group on the walls of the homes. See also: Skymaster video of December 16, 1998 (evidence file, tome 19, folio 9622), where at hour 08:07 a.m. the presence of the FARC in the village is recorded, and Testimony of Maria Cenovia Panqueva, an inhabitant of Santo Domingo, contained in: Attorney General's Office. Special Disciplinary Commission, decision of October 2, 2002. Case file 155-45564-00 (evidence file, tome 20, folios 10409 and *ff.*), in which she recalls that, when returning to the village, she found graffiti relating to the FARC and the ELN on the walls of the pharmacy.

403 Attorney General's Office. Special Disciplinary Commission, decision of October 2, 2002. Case file 155-45564-00, p. 31 (evidence file, tome 20, folio 10438).

279. Regarding the damage caused to the village, the Court observes that, from the evidence in the case file, it can be concluded that two types of damage to property occurred in the village of Santo Domino as a result of the confrontations in Santo Domingo and the surrounding areas: (i) those that resulted from the launch of the cluster bomb, and (ii) those that cannot be attributed to the launching of the bomb and that were probably the result of the subsequent confrontations that took place.[404] Among the damage of this second type is that caused to the gasoline service station which was completely destroyed and burned. In this regard, the Court notes that, as can be seen in the Skymaster video, this was damaged on December 14, 1998,[405] and not as a result of the launching of the bomb.

280. Additionally, this Court notes that insufficient evidence has been provided to prove that the Armed Forces are responsible for other destruction caused in Santo Domingo, in addition to the destruction produced by the launch of the AN-M1A2 device.

281. Regarding the damage that could have been caused by the launch of the AN-M1A2 bomb, the Court notes that, the technical manuals of the device that were forwarded as evidence indicate that this type of weapon "seeks to have an impact on persons and non-armored vehicles, impelling fragments around the impact point.[406] Furthermore, in its judgment, the 12th Criminal Court of the Bogotá Circuit indicated that "the cluster bomb does not have a devastating effect on structures such as buildings or trees, because its force is specifically anti-personnel."[407] It is worth pointing out that, in their analysis of the destructive capability of the bomb used, the representatives also indicated that this device has anti-personnel effects, rather than the demolition of objects.[408] The results of the tests carried out at the Apiay base in 2003 showed that "many of the fragments of the body of the bomb [..] became incrusted and some of the fragmentation shrapnel cut through the wooden planks [placed to simulate the facades of the dwellings]."[409] In this regard, the only damage that could have been caused by the use of that device was that produced by the fragments of the AN-M1A2 bomb. In this regard, and based on the evidence provided,[410] the constructions that could have been affected are those owned by Mario Galvis,[411] Víctor Palomino,[412] Margarita Tilano[413] and Olimpo Cárdenas.[414]

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404 *Cf.* Video Inspection procedure of December 28, 1998 (evidence file, tome 19, folio 9619). See also: Video of the measure taken on December 17, 1998, recording the first inspection carried out of the village of Santo Domingo (evidence file, tome 20, folio 10175).

405 *Cf.* Skymaster video of December 13, 1998, where at 10:09:43 a.m.; 10:14:43 a.m., and 10:36:07 a.m., the gas station seems to be unaffected (evidence file, tome 19, folio 9621), and Skymaster video, where at 09:44:54 the gas station appears burned to the ground (evidence file, tome 19, folio 9621). See also: Prosecutor General's Office. Technical Investigation Unit (CTI). Judicial inspection procedure. December 17, 1998 (evidence file, tome 19, folios 9578 and *ff.*).

406 Technical Manuals of the AN-M1A2 explosive device (evidence file, tome 19, folio 10074).

407 12th Criminal Court of the Bogotá Circuit. Judgment of September 24, 2009 (evidence file, tome 20, folio 10606).

408 *Cf.* Final written arguments of the representatives (merits file, tome 4, folio 1399).

409 Ballistics Report No. 128288 of September 3, 2003, Prosecutor General's Office, Job number BF 1241/2003 Procedure 419 (evidence file, tome 40, folio 21282)

410 *Cf.* Prosecutor General's Office. Ballistics and explosives inspection. Municipality of Tame (department of Arauca) Colombia, December 28, 1998 (evidence file, tome 19, folio 9560); Prosecutor General's Office. National Human Rights Directorate. Judicial inspection procedure. Santo Domingo (Tame). December 18, 1998 (evidence file, tome 19, folio 9582); Prosecutor General's Office. National Human Rights Directorate. Record made of the judicial inspection procedure carried out in the village of Santo Domingo. February 11, 2000 (evidence file, tome 19, folios 9596 and *ff.*); Attorney General's Office. National Special Investigations Directorate. Human Rights Unit. June 18, 1999. Record made of the special visit and inspection of the village of Santo Domingo. Municipal jurisdiction of Tame (Arauca) (evidence file, tome 19, folios 9630 and *ff.*); Video of the measure taken on December 17, 1998, recording the first inspection carried out of the village of Santo Domingo (evidence file, tome 20, folio 10175); Video of the inspection procedure of December 18, 1998 (evidence file, tome 19, folio 9619), and Video of the inspection procedure of December 28, 1998 (evidence file, tome 19, folio 9619).

411 *Cf.* Testimony of victim Mario Galvis Gelves of June 12, 2012, in Statements made by affidavit (evidence file, tome 50, folios 27938 and *ff.*), in which the victim claims that part of his business was damaged by the shrapnel. See also: Attorney General's Office. National Special Investigations Directorate. Human Rights Unit. June 18, 1999. Record made of the special visit and inspection of the village of Santo Domingo. Municipal jurisdiction of Tame (Arauca) (evidence file, tome 19, folio 9632).

282. In this regard, since it is evident that the damage produced by the launching of a cluster bomb in Santo Domingo can be attributed to the Colombian Air Force, the Court finds that the State is responsible for the violation of Article 21 of the Convention in relation to 1(1) of this instrument, to the detriment of the owners of the stores and dwellings affected, namely: Mario Galvis, Víctor Palomino, Margarita Tilano, María Cenobia Panqueva and Olimpo Cárdenas.

VII.4
RIGHT TO HONOR

A. Arguments of the Commission and allegations of the parties

283. The Inter-American Commission did not argue the violation of Article 11 of the Convention.

284. The representatives argued that, "since the events occurred, and owing to the hypothesis designed to divert the criminal investigation, they had asserted the effects on the right to honor and dignity of the inhabitants of Santo Domingo (contained in Article 11(1) of the Convention[415]], based on: (i) the reiterated public declarations of the military leadership in relation to the bombing of Santo Domingo, assuring that they had fired on the aircraft from their houses and thereby suggesting that the inhabitants of the village belonged to the guerrilla and collaborated in its illegal activities (and this throughout the criminal proceedings), and (ii) the creation of the video "L*a Gran Verdad sobre Santo Domingo*" [The real truth about Santo Domingo], which is currently used in order to stigmatize and disregard the existence of the massacre." The representatives also argued that "the activities deployed by State agents in order to ensure impunity [had led] to visualizing Santo Domingo as a village that collaborates with the guerrilla" and that "public perception [had accepted] as true the versions disseminated by the State according to which the FARC was responsible for the massacre, resulting in a scenario of stigmatization of the victims who were perceived as liars."

285. The State argued that it "it did not [deny] the fact that civilians had been murdered and received multiple injuries, but […] these could not be attributed to the State, insofar as the harm to life and personal integrity and most of the rights could be attributed to the explosion of the car bomb by the FARC." The State also indicated that the video "*La Gran Verdad sobre Santo Domingo*" "analyzes the events that occurred in Santo Domingo, establishing, by means of the testimony of members of the Armed Forces, the reasons and evidence why it is not possible to attribute the deaths and injuries of the inhabitants to the Armed Forces, but rather to members of the FARC." It added that "to say that it was the FARC that caused the fateful events under discussion […] does not constitute *per se* a stigmatization of the victims" and that "the civilian population has always considered itself the victim of the armed conflict and of the massacre perpetrated against it by the FARC guerrilla."

B. Considerations of the Court

286. In relation to the right to honor contained in Article 11 of the Convention, the Court has indicated that this "recognizes that everyone has the right to have his honor respected, prohibits any unlawful attack against honor and reputation and imposes on the States the obligation to

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412 *Cf.* Attorney General's Office. National Special Investigations Directorate. Human Rights Unit. June 18, 1999. Record made of the special visit and inspection of the village of Santo Domingo. Municipal jurisdiction of Tame (Arauca) (evidence file, tome 19, folio 9632).

413 *Cf.* Attorney General's Office. National Special Investigations Directorate. Human Rights Unit. June 18, 1999. Record made of the special visit and inspection of the village of Santo Domingo. Municipal jurisdiction of Tame (Arauca) (evidence file, tome 19, folio 9632).

414 *Cf.* Prosecutor General's Office. National Human Rights Directorate. Record made of the judicial inspection procedure carried out in the village of Santo Domingo. February 11, 2000 (evidence file, tome 19, folio 9597).

415 Article 11(1) of the American Convention establishes that "1. Everyone has the right to have his honor respected and his dignity recognized. […]".

provide the protection of the law against such attacks. In general terms, the right to honor is related to self-esteem and self-worth, while reputation refers to the opinion that others have of a person." [416] The Court has declared this right violated in cases in which it has been proved that the State has submitted individuals or groups of individuals to odium, stigmatization, public scorn, persecution or discrimination by means of public declarations by public officials.[417]

287. In the instant case, the Court observes that neither the body of evidence nor the version put forward by the State show that public officials put out versions of the facts of the case in which they considered the population of Santo Domingo to be collaborators and members of the FARC guerrilla group. To the contrary, the versions given by several members of the Colombian Air Force and by the State (*supra* para. 195) indicate that it was the explosion of a red truck that caused the deaths, injuries, destruction and displacement of those who lived in Santo Domingo. The rules of discretion and experience do not allow the Court to infer that the State was promoting the hypothesis of collaboration with the guerrilla on the part of the population of Santo Domingo, when the State itself asserted openly that it was the guerrilla that had attacked the inhabitants of Santo Domingo using such cruel methods of combat.

288. As regards the versions that have been aired in the context of the domestic proceedings, in this case, the Court does not rule on the international responsibility of a State Party to the American Convention in light of the terms used by the accused in the exercise of their right to defense and of other judicial guarantees contained in Article 8 of the said instrument.

289. Based on all the foregoing, the Court finds that insufficient evidence was presented to analyze the facts in light of Article 11 of the American Convention.

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

290. Based on the provisions of Article 63(1) of the Convention,[418] the Court has indicated that any violation of an international obligation that has resulted in harm entails the obligation to repair this adequately,[419] and that this provision "reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility."[420]

291. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Consequently, the Court must observe the concurrence of these elements in order to rule duly and in keeping with the law.[421]

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[416] *Case of Tristán Donoso v. Panama, Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2009. Series C No. 193, para. 57.

[417] *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 148; *Case of Perozo et al. v. Venezuela*, para. 160, and *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. See also, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, paras. 358 and 359.

[418] Article 63(1) of the American Convention stipulates: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[419] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 302.

[420] *Case of Castillo Páez v. Peru. Reparations and costs.* Judgment of November 27, 1998. Series C No. 43, para. 50, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 302.

[421] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 304.

292. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and to repair the consequences of the violations.[422] Thus, the Court has considered the need to grant different measures of reparation in order to redress the damage fully, so that, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.[423]

293. Consequently, and without prejudice to any type of reparation that is subsequently agreed between the State and the victims of the Santo Domingo massacre based on the violations of the American Convention declared in this Judgment, the Court will proceed to order measures designed to repair the harm caused. To this end, it will take into account the claims of the Commission and the representatives, and also the arguments of the State, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation.[424]

A. Injured party

294. The Court considers as "injured party," in keeping with Article 63(1) of the American Convention, the persons indicated in paragraphs 247, 268 and 282 and in annexes I, II and III of this Judgment, as victims of the violations declared herein, so that they will be considered beneficiaries of the reparations ordered by the Court.[425] Similarly, the Court has stated that the presumed victims must be indicated in the merits report of the Inter-American Commission,[426] and observes that 24 individuals named by the representatives as next of kin of the victims, are not included in the merits report issued by the Commission in this case. Nevertheless, of these 24 individuals, six family members of two of the deceased victims received reparation under the contentious-administrative jurisdiction;[427] thus it can be understood that the State acknowledged them as victims. Consequently, the Court finds that it is not appropriate to consider as victims or as injured party 18 of the persons presented as next of kin of victims by the representatives,[428] without prejudice to the reparations that may correspond to them at the domestic level.

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422 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of the Río Negro Massacres v. Guatemala*, para. 248.

423 *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*, para. 294, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 305. See also, *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26,

424 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 303.

425 The Court places on record that 23 of the 27 injured persons were recognized as such by the domestic courts, and four in the military criminal investigation (not by the judges), based on information obtained from a town meeting. In addition, two people mentioned in the decision of the Military Criminal Investigation Unit, specifically Ludo Vanegas and Alcides Bonilla, are the same age, have no known next of kin, and also have a very similar name to two of the victims identified in the other proceedings, namely: Ludwing Vanegas and Milciades Bonilla, so that they could be the same people.

426 *Cf. Case of the Ituango Massacres v. Colombia*, para. 98, and *Case of Barbani Duarte et al. v. Uruguay. Merits reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 42. See also, *Case of Uzcátegui et al. v. Venezuela*, para. 243.

427 Namely, Oscar Andrey Galvis Mojica (son of Teresa Mojica Hernández and Mario Galvis Gelves), Albeiro Galvis Mojica (son of Teresa Mojica Hernández and Mario Galvis Gelves), Norberto Arciniegas Calvo (brother of Arnulfo Arciniegas), Argemiro Arciniegas Calvo (brother of Arnulfo Arciniegas), Orlando Arciniegas Calvo (brother of Arnulfo Arciniegas) and Erlinda Arciniegas Calvo (sister of Arnulfo Arciniegas).

428 Luis Felipe Durán Mora, Luz Dary Tellez Durán, Yamile Tellez Durán, Wilmer Tellez Durán, Emilse Hernández Durán, Milena Durán, Yeimi Sulai Hernández Mora, Mary Molina Panqueva, Moises Molina Panqueva, Genny Carolina Molina Restrepo, Wilson García Reatiga, Wilson Enrique García Guevara, María Antonia Rojas, Elizabeth Daza Rojas, José Antonio Daza Rojas, Wilson Daza Rojas, Javier Daza Rojas and Frady Alexi Leal Pacheco (the latter, even though he had recourse to the contentious-administrative proceedings, did not receive compensation because he had not proved that he was the brother of a victim, or a victim himself) (evidence file, tome 2, folios 787 and 792).

B. Obligation to investigate

295. The Commission asked the Court to order the State, "to conduct an impartial and thorough investigation within a reasonable time in order to prosecute and punish all those who carried out and masterminded the human rights violations found in [the Merits Report]."[429] Meanwhile, the representatives concurred with this request and indicated that the State should be ordered to guarantee "access to justice to the next of kin of the victims of […] Santo Domingo by conducting a serious and effective judicial proceeding designed to investigate, prosecute and punish, proportionately, the perpetrators and masterminds of the bombardment of December 13, 1998, the subsequent machine gun attack on the survivors, the acts of looting and destruction of the homes, and the subsequent stigmatization of the victims and actions aimed at altering the course of the investigation."[430]

296. For its part, the State indicated, in general, that article 149 of Law 1448 of 2011 (Victims Act) includes the application of sanctions to those responsible for violations of international humanitarian law.

297. Regarding the obligation to investigate, the Court indicates that no violations were declared in relation to the rights to judicial guarantees and judicial protection (*supra* para. 175). Despite this, as indicated (*supra* para. 163 and *infra* operative paragraph 7), under the general obligation contained in Article 1(1) of the Convention, the State must continue the administrative and judicial investigations and proceedings underway and open any more that are appropriate in order to determine the facts and responsibilities.

C. Measures of satisfaction, rehabilitation and restitution, and guarantees of non-repetition

298. The Commission asked, in general, that the Court order the State "to establish, with the participation of the community in its design and implementation, a collective reparation mechanism that recognizes the impact that the bombardment had on the civilian population of the village of Santo Domingo to remedy the grave and lasting consequences for the community as a whole and that takes into consideration development initiatives on health, housing and education," as well as "to provide adequate reparation for the human rights violations found in the [Merits Report] for both the pecuniary and the non-pecuniary aspects, including the elucidation and dissemination of

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[429] The Commission added that it was also ordered "to investigate the connections between State agents and the oil company that was operating in the area where the events occurred."

[430] In addition, the representatives asked that: (a) this "should take into account the unexplored lines of investigation, including the need to investigate the activities of the private companies during operations *Relámpago I* and *Relámpago II,* as well as the participation of three presumed United States citizens who took part in the said operations on board the Skymaster aircraft, and the loan and facilitation of resources such as OXY's office G"; (b) the State should conduct the "investigation into all those involved in the planning and implementation of the joint military operation *Relámpago II* and identify the responsible line of command, all the perpetrators involved in the air and on land and, with regard to the masterminds, those who took part in the decision to use the cluster bomb launched from the UH1H helicopter on the inhabitants of Santo Domingo on December 13, 1998"; (c) the State must "abstain from using procedural obstacles such as the expiry of time frames, prescription, *res judicata*, the principle of *non bis in idem*, amnesty laws or any other mechanism that permit exempting those who took part in the events from responsibility; in particular, those related to the constitutional reform known as the "legal framework for peace"; (d) the Court should order the State "to remove immediately the *de facto* and *de jure* procedural obstacles generated during the proceedings before the military criminal justice system, adapting the necessary normative, practical and jurisprudential mechanisms to ensure that all those responsible are investigated, prosecuted and punished proportionately," and (e) "the State must prohibit members of the Military Forces accused of severe human rights violations from continuing to fail to serve their sentences on military premises." In addition, the representatives asked that the State be ordered "to take appropriate measures […] with regard to all those responsible for the acts of stigmatization against the inhabitants of Santo Domingo. To this end, the State should forward to the Human Rights Unit of the Prosecutor General's Office all the active proceedings or those that may be filed in the future for fresh stigmatizations, defamation, insults, threats and harassment and joinder them in a single procedural action in order to unify all the evidence that permits identifying, prosecuting and punishing those responsible." Lastly, the representatives also indicated that the State must "publicize widely the results of the criminal investigations that truly and effectively include these lines of investigation."

the truth of the events, recovery of the memory of the deceased victims, and implementation of an adequate program of psychosocial care for surviving family members."

C.1. Measures of satisfaction

a) Public act of acknowledgement of responsibility

299. The representatives requested the organization of an "[a]ct of public acknowledgment by the State during which it should assume responsibility for acts (responsibility of its agents in the execution of the bombing, forced displacement, and obstruction of the criminal investigation) and omissions (failure to adopt measures of protection for the civilian population, lack of due diligence in the criminal investigations) in the acts perpetrated against the population of Santo Domingo on December 13, 1998, and subsequently."[431] The Commission did not present specific arguments in relation to this measure of reparation.

300. Regarding the requested measures of rehabilitation and satisfaction, the State indicated, in general, that articles 141 to 143 of Law 1448 of 2011 (Victims Act), refers to the symbolic reparation of the victims, the establishment of the national day of solidarity with and remembrance of the victims (April 9 each year) and the State's obligation to remember, as guarantees of full reparation for the victims, so that the measures of satisfaction and rehabilitation and guarantees of non-repetition for the presumed victims are not necessary because the State has already initiated the process of integral reparation of the victims of violations of human rights protected by the American Convention.[432] Regarding the measures of satisfaction addressed at obtaining the State's public acknowledgement of responsibility and the recovery of the memory, the State directed attention to article 139 of Law 1448 of 2011 which stipulates that "[t]he national Government, under the National Plan for Integral Attention to and Reparation for Victims, must take measures designed to re-establish the dignity of the victim and to disseminate the truth about what happened, in keeping with the entities that constitute the National System of Attention to and Reparation for Victims. […] The measures of satisfaction should be interpreted merely from an enunciative perspective, which implies that others can be added to them: (a) public acknowledgement […] of the victim's character, dignity, name and honor, before the community and the offender; […] (c) commemorative acts; (d) public acknowledgements, [and] (e) public homages […]."[433]

301. The Court notes that the State referred to Colombia's domestic laws which establish that the State must take measures designed to re-establish the dignity of the victim, including measures of satisfaction such as those requested. In this regard, the Court assesses positively the existence of these provisions of domestic law, despite which it finds that, in the instant case, it is appropriate to order the measure requested by the representatives. Consequently, the Court, as it has in other cases,[434] orders the State to organize a public act of acknowledgement of international responsibility in which it refers to the facts of the case and to the responsibility declared in the terms of this Judgment. The act must be broadcast on the television and/or the radio and must be held within six month/one year of notification of this Judgment. Likewise, owing to the specific

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[431] The representatives also indicated that "[t]he act must be presided by senior State authorities, take place at a symbolic site in the department of Arauca agreed with the victims and their representatives, and the National Government must ensure that it is broadcast in direct by the State television stations and disseminated in the mass media."

[432] The State also indicated that "the local and government authorities, in agreement with the Social Solidarity Network, have signed and executed contract 0499/1999. Its main purpose was the reconstruction of Santo Domingo and the improvement of its housing. In addition, the Social Solidarity Network awarded a grant equivalent to five million pesos (5,000,000) to each of the persons who claimed that they had been affected by the ill-fated events that occurred in Santo Domingo on December 13, 1998."

[433] The State also indicated that "the public apology and the acknowledgement of responsibility are categorized as measures designed to restore the dignity of the victims and to raise awareness about the events that gave rise to the human rights violations." In addition, it indicated that "this measure also contributes to provide satisfaction to the victims and as a guarantee of non-repetition, because it commemorates the victims and results in awareness of the events that originated the non-compliance with the provisions of the Convention."

[434] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 81, *and Case of the Río Negro Massacres v. Guatemala*, para. 277.

characteristics of this case, and in order to create awareness of the consequences of its facts, senior State officials must attend the said act of acknowledgement.

302. The organization and characteristics of the said act must be agreed with the victims and their representatives within the six months following notification of this Judgment. Since the representatives alleged that not all the victims live in the village of Santo Domingo, which was not disputed by the State, the latter must guarantee the presence of the victims who do not live in Santo Domingo and wish to attend the said act, and must cover the necessary transportation expenses.

b) Publications

303. Although it was not requested by the representatives or the Commission, the Court considers pertinent to order, as it has in other cases,[435] that the State publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the official gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in full, available for one year, on an official web site.

C.2. Rehabilitation measures

304. The representatives asked the Court to order the State "to grant the victims and their next of kin medical and psychological treatment, free of charge and immediately, through its state or private health care institutions specialized in attention to victims of violent acts; this medical and psychological treatment required by the victims to be provided by collective, family or individual treatments, based on the problems suffered by these people, ensuring that they are provided with the most appropriate and effective treatment."[436] The representatives clarified that the medical and psychological treatment of the victims must also be implemented "from a psychosocial perspective [for] the violations that were declared and for the consequences that continue today."[437] The Commission did not present specific arguments in relation to this measure of reparation.

305. The State indicated that, in relation to the requested measures of rehabilitation and satisfaction, article 137 and *ff.* of Law 1448 (Victims Act), had created the integral health and psychosocial treatment program for victims. It also referred to the social programs entitled "*La estrategia UNIDOS"* and *"Familias en acción,"*; the former unites 21 State entities in the provision of basic services with which the national Government hopes that the poorest families, including those that have been forced to abandon their place of residence, will be able to overcome their situation of poverty.[438] In addition, the State indicated that it had provided urgent medical care to those injured in Santo Domingo.

306. The State also argued that "immediately after the events and the subsequent displacement, the Governor of the department of Arauca at the time summoned a meeting of the Cabinet and

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435 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 79, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 361.

436 The representatives added that: "[t]he said medical and psychological treatment must be provided for as long as necessary and take into consideration the ailments of each of them, following an individual assessment, and be provided, insofar as possible, in the centers nearest to their place of residence."

437 In addition to the foregoing, the representatives indicated that: (a) "[i]t is possible to infer that the massacre, the forced displacement, and the feelings of terror and anguish experienced in Santo Domingo on December 13, 1998, had an impact on the physical and mental health of the victims and their next of kin, effects that have not been treated"; (b) "In some cases, the bodies of the victims and their next of kin still bear the visible physical scars of shrapnel incrusted in their body and other different bodily scars, added to the pain, sadness and impotence, among other feelings, that have not received professional diagnosis, treatment and support."

438 In this regard, the State indicated that "[t]he network [also] has a group of community workers, called social promoters, responsible for identifying the families and supporting them in the implementation of a road map towards their self-determination in order to overcome their situation (Family Plan)." The second program mentioned consists in "four of the individuals on the list receive direct monetary support for the components of child nutrition and education […], conditional on the family complying with certain commitments: in education, guaranteeing the school attendance of the [children], and in health, by the children attending programmed appointments to control their growth and development."

delegated an official from the Government Secretariat to deal with the situation directly. The latter went immediately to Tame and, in coordination with the Mayor of this municipality, provided the initial emergency humanitarian aid to the population that had displaced from Santo Domingo. Furthermore, the emergency humanitarian aid was extended for 20 days after December 13, 1998, and in addition to food, included accommodation and clothing."[439]

307. First, the Court assesses positively the general initiatives taken by the State related to the system of public health care. Despite this, it finds it pertinent to indicate that the provision of social services that the State offers the individual cannot be confused with the reparations to which the victims of human rights violations have a right, owing to the specific harm resulting from the violation.[440]

308. On the one hand, the Court considers that, even though the State clarified that those who were injured owing to the events that occurred in Santo Domingo on December 13, 1998, were provided with the necessary medical attention through the Colombian public hospital network, the medical records provided by the State do not allow verification of this assertion, because they all refer to medical care provided on December 13, 1998, or in the following days, but do not refer to a treatment that has been extended over time in keeping with the specific characteristics of each victim.

309. Therefore, and noting the violations and the harm suffered by the victims, as it has in other cases, [441] the Court considers it necessary to order measures of rehabilitation in this case. In this regard, the State must provide, free of charge, adequately and effectively through its specialized health institutions, medical, psychological or psychosocial attention and treatment to the victims and their next of kin that request this, following their informed consent, including the provision, free of charge, of the medicines and tests that may eventually be required, based on the specific p ailments of each of them. In addition, the respective treatments must be provided, insofar as possible, in the centers nearest to their places of residence,[442] for as long as necessary. When providing the psychological or psychosocial treatment, the particular circumstances and needs of each victim must also be considered so that they are provided with collective, family or individual treatment, as agreed with each of them and following an individual appraisal.[443]

C.3. Other measures requested

310. The Commission recommended to the State that it "provide reparation to the children affected by the bombardment of the village of Santo Domingo through measures in which the best interest of the child, respect for their dignity, the right of children to participate, and respect for their opinions in the process of designing and implementing the measures of reparation prevail." The representatives did not present arguments in this regard. For its part, the State indicated that it had provided emergency humanitarian aid to the population," that "measures had been adopted for the reconstruction of Santo Domingo and to improve its housing" (*supra* para. 264,) and that "also an assistance was provided that equaled five million Colombian pesos to the individuals who authenticated their status as orphans owing to the events that occurred on December 13, 1998, in the said village." It concluded by indicating that all these measures directly benefited the surviving children.

311. In relation to this measure of reparation, the Court considers that the purpose of the Commission's request was unclear.

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439 Affidavit provided by Nilsa de Jesús Díaz Herrera (evidence file, tome 50, folio 27987).

440 *Cf. Case of González et al. ("Cotton field") v. Mexico*, para. 529, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 350.

441 *Cf. Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 352.

442 *Cf. Case of the Las Dos Erres Massacre v. Guatemala*, para. 270, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 353.

443 *Cf. Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*, para. 278, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 353.

312. The representatives asked the Court to order the State to "produce audiovisual material (film or documentary) that reconstructs the facts of the case, in consultation with the victims and their representatives, and in accordance with the Court's Judgment." They also indicated that compliance with the measure would be part "of a public campaign that highlights the civilian population status of the victims of the massacre and counters the stigmatization [to which] they were subjected as supposed members of the guerrilla or collaborators with the insurgency."[444] The Commission did not present specific arguments with regard to this measure of reparation. The State referred, in general, to article 149 of Law 1448 of 2011 (Victims Act) and indicated that it had adopted legal, administrative and other measures to avoid the repetition of the facts, including verification of the facts and the complete public dissemination of the truth, insofar as this did not cause more unnecessary harm to the victims, the witnesses or other persons, or create any danger to their safety.

313. Regarding this request, the Court recalls that it has not found that the alleged violation of the right to honor of the victims of the events of Santo Domingo has been proved; therefore, it does not find it pertinent to order the measure requested.

314. The representatives asked the Court to order the State to guarantee the life and personal integrity of all those victims who have been taken part in the processing of the proceedings and, subsequently, in the judgment delivered by the Court. They added, "[s]pecifically as regards guarantees for participation in the criminal proceedings, taking into account the murder of Ángel Trifilo (witness to the massacre and the subsequent events), as well as the facts that the Court was advised of by the representatives in a communication of May 30, 2012, related to pressure and harassment against the victims of Santo Domingo."

315. The Court considers that no arguments or evidence was forwarded that supports the representatives' request, so that it is not appropriate to order this measure of reparation.

316. The Commission asked the Court to order the State to "adopt such measures as may be necessary to prevent a repetition of patterns of violence against the civilian population in keeping with the duty to protect and ensure the fundamental rights recognized in the American Convention. The representatives considered that the State "must adopt […] the necessary legislative, administrative and other measures to guarantee, effectively, the non-repetition of events such as those that occurred in this case."[445] As part of this process, it must ensure that the laws regarding the disproportionate use of force and use of weapons ensure the highest possible level of protection for the citizenry."[446] The State did not present specific arguments in this regard.

317. Regarding the measure of reparation requested, the Court observes that, in the instant case, it had not been proved that the alleged shortcomings in domestic law had resulted in non-compliance with the obligation to adopt provisions of domestic law contained in Article 2 of the

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[444] In addition, they stated that this material "should be transmitted, in keeping with the authority of the National Television Commission, by public and private channels at peak time, and used in the training courses for the Military Forces, as a means of counteracting the judicial and extrajudicial public defamation of the victims carried out by members of the Military Forces by the preparation of the video *La Verdad sobre Santo Domingo,* and its dissemination on several television programs and television news programs.

[445] In particular, they asked the Court "to order Colombia to undertake the necessary legal, administrative and other measures to avoid the repetition of similar events, not only in relation to the Colombian Armed Forces, but also, as a priority, it should adopt preventive measures in relation to the activities of foreign security and surveillance companies and extractive companies on Colombian territory, precisely to prevent possible human rights violations."

[446] They asked, in particular, for the incorporation of protocols, guidelines and laws for the protection of the civilian population and their property in accordance with humanitarian law for the conduct of hostilities, in the design, planning and execution of counterinsurgency airborne operations, as well as control mechanisms to avoid the repetition of similar events to those that occurred in the massacre of Santo Domingo. They also asked the Court to order the State: (a) to abstain from using procedural obstacles such as the expiry of time frames, prescription, *res judicata*, the principle of *non bis in idem*, amnesty laws or any other mechanism tending to exempt those who took part in the events of responsibility. In particular, those related to the constitutional reform known as the "legal framework for peace," and (b) "to remove immediately the *de facto* and *de jure* procedural obstacles generated during the proceedings before the military criminal justice system, adapting the necessary normative, practical and jurisprudential mechanisms to ensure that all those responsible are investigated, prosecuted and punished proportionately." Lastly, it asked the State to prohibit members of the Military Forces accused of severe human rights violations from continuing to fail to serve their sentences on military premises."

American Convention. Therefore the Court finds that it is not appropriate to order this measure of reparation.

318. The Commission recommended that the State implement permanent programs of human rights and international humanitarian law in the Armed Forces training academies." The representatives requested the creation of a seminar on human rights and international humanitarian law, to be given in all the courses for promotions in the Colombian Air Force, which should include in its content the obligations relating to the means and methods of war, and the special protection that children deserve during armed conflicts.

319. The State indicated that article 149 of Law 1448 of 2011 (Victims Act) includes the application of sanctions on those responsible for violations of international humanitarian law, the creation of a social pedagogy that promotes the constitutional values on which reconciliation is based in relation to the events that have taken place in the historical truth, the creation of a single training strategy and pedagogy on respect for human rights and international humanitarian law, which includes a differentiated approach, directed at public officials responsible for ensuring compliance with the law, as well as the members of the Armed Forces, the effective control of the Armed Forces by civil authorities, and the promotion of mechanisms designed to prevent and resolve social conflicts.

320. The Court observes that the State provided certain information on programs and actions implemented in this area, the existence and validity of which was not contested by the Commission and the representatives, and regarding which no information was presented indicating possible shortcomings. Since the State has been implementing the requested measure of reparation by taking certain measures, the Court does not find it appropriate to order this. Nevertheless, the Court considers it extremely important to urge Colombia to comply with the said commitment to continue adopting all necessary measures to adopt and strengthen (including with the respective budgetary allocation), an obligatory program or course as part of the general and ongoing training for members of the Colombian Air Force, of all ranks, that includes, *inter alia,* courses or modules on national and international standards for human rights and on the principles of international humanitarian law that guide the use of force by the State's security forces.

321. The representatives asked that, in addition to the general measures indicated by the Commission, the Court order the State to "reconstruct Santo Domingo, [and] to adopt a series of pecuniary and non-pecuniary measures (relating to advisory services and support) that can be taken by the State financing a community development plan aimed at re-establishing the life projects impaired by the human rights violations, and the reconstruction of the village, which make it possible for individuals and families who so wish to return."

322. Lastly, the representatives asked the Court to order the State to take measures for the "[r]ecovery of the memory by the construction of a Culture Institute (*Casa de la Cultura*) in the municipality of Tame, destined for the dissemination of human rights, the reconstruction of the memory of the department of Arauca, and as a permanent memorial to the victims of human rights violations. [The participation is required of] the area's community organizations, communal action committees, parents' associations, small farmer associations, and others."[447] The Commission did not present specific arguments with regard to this measure of reparation. The State did not present specific arguments in relation to this measure of reparation, although it made a general reference to articles of Law 1448 that contain provisions on symbolic reparation, on the national day of remembrance and solidarity with the victims, and the State's obligation of remembrance.

323. The Court considers, with regard to the other measures requested by the representatives, that this Judgment constitutes *per se* a form of reparation, so that, without prejudice to the measures that

[447] The representatives added that "the construction of an arch located at the entrance to the village of Santo Domingo (on the road to Tame), with the image of the victims on its columns and, on the upper part, an allegorical image of the events of December 13, 1998, and the persistence of the victims and the Araucan population in seeking justice. The departmental and/or municipal budget should include a permanent item to support collective and community projects designed to strengthen this purpose."

the State must implement in favor of the victims in this case in the context of its social and political reparation programs, it is not appropriate to order these other measures that have been requested.

D. Compensation

D.1. Arguments of the Commission and allegations of the parties

324. The State has indicated that, in the instant case, it is not necessary to adopt decisions in this regard, because the State has already compensated the damage caused.[448] The State indicated that this reparation corresponds to the payment of compensation for the losses caused to those affected in the Santo Domingo case.

a) Loss of earnings

325. In light of the fact that the earnings of most of the victims is unknown, and there is even uncertainty about their productive activity, the representatives asked the Court to take as a basis the minimum legal wage in force in Colombia in 2011[449] reduced by 25%, which is the percentage that the victim presumably used for subsistence.[450] The State indicated is disagreement with regard to the "calculation of the loss of earning of the families affected by the facts analyzed on this occasion."[451]

b) Indirect damage

326. The representatives asked "that a compensatory amount of US$5,000 be established in equity for each family group and, in the case of individuals, an amount of US$2,000," taking into

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[448] It is answering brief, the State affirmed that "since March 2009, by means of electronic transfers from the accounts of the Colombian National Treasury, two payments had been made to the current account in the Banco BBVA of the victims' legal representative. One for four thousand three hundred and sixty-five million one hundred and nine thousand five hundred and eighty-four pesos (4,365,109,584 pesos) and the other for one thousand three hundred and ninety-three million six hundred and forty-nine thousand nine hundred and thirty-four pesos (1,393,649,934 pesos)."

[449] According to Ministry of Social Protection Decree 4834 of December 30, 2010, amended by Decree 033 of January 11, 2011, the minimum legal monthly wage for workers in the urban and rural sectors is 535,600 Colombian pesos. As the representatives indicated, this resulted in a wage of 401,700 Colombian pesos a month. The representatives added in this regard that the payments made for this loss of earnings should be increased by 25% for social benefits. Consequently, the wage based on which this damage should be repaired is 502,125 Colombian pesos a month; thus $6,025,500 a year, plus interest ($361,530); this would give a total of 6,387.030 Colombian pesos (representing US$3,348), a sum that should be multiplied by the remaining time in the life expectation in years of the victim and the loss of working capability in the case of those who were injured, in order to establish the total for reparation. The data on the loss of working capability has been taken from what was proved in the proceedings on reparation under the domestic contentious-administrative jurisdiction.

[450] Based on the foregoing calculations, the representatives requested the payment of the following sums to the next of kin of those who died: to the Galvis Mujica family: US$114,935 for the death of María Teresa Mujica, and to Mario Galvis US$35,717 for his injuries. To the Carrillo Mora and Carrillo Moreno family: US$158,525 for the death of Rodolfo Carrillo. To the Neite González family US$77,036 for the death of Salomón Neite. To the Neite Méndez-Rangel family: US$185,174 for the death of Luis Carlos Neite Méndez. To the Vanegas Tulivila family: US$185,174 for the death of Oscar Esneider Vanegas Tulivila, and to Edwin Fernando Tulivila US$48,979 for his injuries. To the Duarte Cárdenas family: US$171,046 for the death of Carmen Antonio Díaz Cobos. To the Leal Pacheco family: US$177,742 for the death of Edilma Leal Pacheco. To the Hernández Becerra family: US$185,174 for the death of Johany Hernández Becerra. To the Martínez Carreño and Martínez Talero family: US$158,525 for the death of Luis Orlando Martínez Carreño. To the Ávila Abaunza (Castillo) and Bonilla Ávila family: US$209,614 for the death of Nancy Ávila Abaunza. To the Cárdenas Tilano family: US$209,614 for the death of Deysi Katherine Cárdenas Tilano, and to Erinzon Olimpo Cárdenas Tilano US$12,407 for his injuries. To the Castro Bello family: US$185,174 for the death of Jaime Castro Bello Tilano the Quintana Bello-Tilano family: USS209,614 for the death of Egna Margarita Bello Tilano, and to Mónica Alicia Bello Tilano US$34,650 for her injuries. To the Suárez Daza and (Suárez) Cedano family:, US$158,525 for the death of Pablo Suárez Daza. To Alba Yanet García Guevara US$47,687 for her injuries, and to Fredy Yovany Monoga Villamizar US$54,478 for his injuries.

[451] In this regard, the State indicated that it is not sufficient "to establish the salary that the victim might have earned in order to extend it over his or her life expectancy (which, also, changes radically in the calculations. For example: the life expectancy for Mario Galvis, who died at the age of 47, was 78 years; for the child, Johany Hernández, who died at the age of 14, his probable life was calculated at 73 years; while for Salomón Neite, who died at the age of 58, his life expectancy was calculated at 81 years). When calculating loss of earnings, evidence must be presented that allows the employment capacity of the victim to be concluded, and also the financial dependency of his heirs or the contribution to the family wealth. In this case, none of this was proved."

consideration transportation, accommodation and food expenses in the places where they received information, as well as intermediation measures taken before State entities in order to demand progress in the criminal and disciplinary proceedings over the last 13 years. The State did not present specific arguments under this heading.

327. The representatives considered that "in the events, 27 persons, adults and children were injured and [therefore] their families had to care for them and use the family's financial resources to obtain the health care services required for their recovery from the time of the facts until now. In addition, several of those injured suffer total or partial disabilities and secondary effects that affect their ability to work."[452] In addition, they considered that "they suffered intense physiological damage, because, experiencing this situation has affected their physical, psychological and psychiatric integrity and, currently, their overall health has been impaired, which is revealed by the effects of being subjected to such a tragic situation."[453] The State did not present arguments in this regard.

328. The representatives indicated that the funeral rites for most of the victims who were killed were held by means of collective commemoration. Their next of kin incurred the said expenses, which were claimed in the requests for reparation at the domestic level; however, the first instance judgment delivered by the Arauca administrative court[454] did not recognize some of the amounts requested under the heading of funeral services, while it also failed to duly update the amounts requested;[455] furthermore, it did not recognize interest to make up for the prejudice arising from this over the 13 years that it was not reimbursed and, also, reduced them by 2% as a result of the conciliation agreement in second instance.[456] Consequently, they asked the Court to order the State to make an additional payment under this heading.[457]

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[452] In particular, they asked that the State grant "compensation, in equity, for the families of the victims, based on the following criteria: (1) For the family of a victim who was injured without being incapacitated for employment by the doctors, the sum of US$2,500; (2) For the family of a victim whose employment capacity was reduced by up to 10%, compensation of US$5,000; (3) For the family of a victim whose employment capacity was reduced by 10% to 20%, compensation of US$10,000; (4) For the family of a victim whose employment capacity was reduced by 20% to 30%, compensation of US$15,000; (5) For the family of a victim who suffered the highest reduction of employment capacity, the rule of increasing the sum by US$5,000 for each 10% extra, and (6) If the injured person was a minor, this compensation should be increased by US$2,500, owing to the increased care required by patients in this group." In addition, they asked that the Court order the payment of the same concepts to the following families. To the Galvis Mujica family US$20,000, to the Neite González family US$5,000, to the Neite Méndez-Rangel family US$ 2500, to the Vanegas Tulivila family US$15,000, to the Molina Panqueva US$2,500, to the Ávila Abaunza (Castillo) and Bonilla Ávila US$2,500, to the Barranco Bastidas family US$2,500, to the García Guevara family US$17,500, to the Cárdenas Tilano family US$15,000, to the Quintana Bello-Tilano family US$10,000, to the Daza Rojas family US$5,000. To Fredy Yovany Monoga Villamizar US$20,000 and to other independent injured victims US$2,500.

[453] The representatives requested, specifically, and according to the criteria stated, that the injured should receive reparation for physiological harm as follows: US$35,000 for Mario Galvis and Fredy Yovany Monoga Villamizar; US$30,000 para Edwin Fernando Vanegas Tulivila and Alba Yaneth García Guevara; US$20,000 for Mónica Alicia Bello Tilano; US$15,000 for Erinzon Olimpo Cárdenas Tilano; US$7,500 for Neftalí Neite, Marcos Aurelio Neite, Hilda Yuraine Barranco Bastilla, Rosmira Daza Rojas, Lida Barranca, Ricardo Ramírez, Yeimi Viviana Contreras and Maryori Agudelo Flórez; and US$5,000 for Amalio Neite, María Cenobia Panqueva, Milciades Bonilla, Gleydis Xiomara García Guevara, Maribel Daza Rojas, Ludwing Vanegas, Marian Arévalo, José Agudelo Tamayo, Pedro Uriel Duarte Lagos, Ludo Vanegas, Adela Carrillo, Alciades Bonilla and Fredy Mora.

[454] Judgment of the Contentious Administrative Court of Arauca, Mario Galvis Gelvez *et al.*, case file No. 81-001-23-2000-348, May 20, 2004 (evidence file, tome XX, folio 10180 to 10274).

[455] The representatives updated the figures based on the Consumer Price Index (CPI) for December 1998, which was 52.18 and the CPI for September 2011, which was 108.35 points. This calculation was not contested by the State.

[456] Conciliation hearings held before the Third Section of the Council of State, the first on November 24, 2006, and the second on November 8, 2007, in the proceedings for direct reparation in the domestic jurisdiction. On November 24, 2006, the parties reached a conciliation that was ratified in a hearing of November 8, 2007, and approved on December 13, 2007. See the Conciliation Agreement, Third Section, Council of State, Mario Galvis Gelves *et al.*, proceedings No. 28259, November 8, 2007 (evidence file, tome 3, folios 1044 and 1045), and Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007 (evidence file, tome 2, folios 751 to 806).

[457] They asked, in particular, that the State be ordered to pay: US$700 for the families of Salomon Neite and Luis Orlando Martínez Carreño, US$800 for the family of Edilma Leal Pacheco, US$900 for the family of Luis Carlos Neite Mendez, US$1,000 for the families of Rodolfo Carrillo, Deysi Katherine Cárdenas Tilano, Jaime Castro Bello and Egna

329. The State indicated that "the calculation of indirect damage for the funeral expenses incurred by the victims under the domestic jurisdiction ranges from US$335 to US$550 approximately" and that "this expense was calculated in the international jurisdiction at between US$700 and US$4,400," so that it "does not understand how this can happen if the funeral expenses remain the same, and the jurisdiction under which they are requested is irrelevant."

330. The representatives argued that, owing to the effects of the explosion of the cluster bomb and the subsequent machine gun attack, as well as the military occupation of the village for almost three weeks, damage and destruction occurred to the homes of several Santo Domingo families which resulted in the deterioration of their living conditions.[458]

331. The State indicated, first, that "to date, [the destruction and/or deterioration of property and the loss of earnings resulting from this event has not been proved, so that] doubt exist about the ownership and prior existence in the village of the commercial establishments that supposedly were owned by these persons."[459] Furthermore, the State indicated that "the victims requested excessive amounts."[460]

c) Non-pecuniary damage

332. The representatives asked the Court to order the State to make reparation for the non-pecuniary damage suffered.[461]

333. For its part, the State asked the Court to consider "that the payments made by the Council of State were reasonable when providing reparation for the non-pecuniary damage to the spouses, parents, children, grandchildren and grandparents.

Margarita Bello Tilano, US$1,300 for the family of Johany Hernandez Becerra, US$1,700 for the family of Carmen Antonio Díaz Cobos, US$1,750 for the family of Pablo Suarez Daza, US$1,937 for the family of María Teresa Mujica, US$2,000 for the family of Nancy Ávila Abaunza, US$2,050 for the family of Luis Enrique Parada Ropero, US$2,600 for the family of Oscar Esneider Vanegas Tulivia, US$3,200 for the family of Arnulfo Arciniegas Calvo and US$4,400 for the family of Maria Yolanda Rangel.

458 In particular, they indicated that the amount of this measure of reparation should be US$5,000 for each family that recorded such a deterioration [to their living conditions] or to their property and possessions, and this should be increased by US$5,000 when the families recorded agricultural losses. Regarding the business establishments, the following families have indicated ownership of or damage to such establishments calculated as follows: (a) business establishment "El Oasis" owned by the Galvis Mujica family, US$193,431; (b) pharmacy and miscellaneous store "Santo Domingo" owned by the Molina Panqueva family, US$184,227; (c) business establishment for clothes, sewing materials and tailoring owned by Hugo Fernely Pastrana Vargas, US$49,348; (d) gas station, restaurant and hotel (lodging) US$42,779, and (e) Chevrolet vehicle owned by the Palomino Cortes family, US$15,499. The Court observes that the representatives forwarded contradictory information with regard to the amount of the measures of reparation of Hugo Fernely Pastrana Vargas, which also appears in the figures submitted by the representatives and for whom the amount of US$53,848 is claimed.

459 In particular, the State indicated that "if the ownership of the property has not been proved, […] it is not possible to infer that pecuniary damage has been caused"; second, the State indicated that, "since the ownership or possession of the business establishment supposedly affected in the village by the events that occurred on December 13, 1998, has not been proved, the pecuniary damages requested cannot be established, based on equity."

460 The State indicated, in particular, that it was a recognized fact that, "in the village of Santo Domingo it is unreasonable to consider that a business establishment could cause damage for almost US$200,000 or that the deterioration of a lodging place could represent US$42,780. It is ludicrous to think that a 1955 vehicle could cost US$15,499, when new vehicles can be bought for around US$13,000. In addition to the fact that the amounts are unreasonable, neither the existence of the businesses, nor the ownership of the said properties has been proved."

461 In particular, they asked that the payment be determined as follows: (1) for each of the 17 deceased victims, the sum of US$100,000, or the equivalent in Colombian currency. In the case of child victims, this amount should be increased by US$25,000, owing to their condition as such; (a) Regarding the next of kin: father, mother, spouse or companion and children of the deceased victims the sum of US$70,000; (b) Regarding the next of kin: siblings, aunts and uncles, nephews and nieces of the deceased victims the sum of US$30,000; (2) For each of the 27 injured victims, the sum of US$1,000, or the equivalent in Colombian currency, for each unit of loss of employment capacity, and this should, in any case, be rounded up to the nearest multiple of $5,000, for purposes of equity. In the case of the victims who have only suffered wounds, the sum of US$5,000. In addition, in the case of children, another US$5,000 should be added if there is incapacity, or US$2,500 if they were only wounded; (a) Regarding the next of kin: father, mother, spouse or companion and children of the injured victims the sum of 20% of the compensation received by each of their respective family members; (b) Regarding the next of kin: siblings, aunts and uncles, nephews and nieces of the injured victims the sum of 10% of the compensation received by each of their respective family members, and (3) For each of those whose right to property was harmed, the sum of US$3,000 in the cases that correspond to business establishments or assets, and US$2,000 in the cases relating to homes."

D.2 Considerations of the Court

334. In this case, the Court notes that the next of kin of those who died in Santo Domingo received reparation under the Colombian contentious administrative proceeding (*supra* paras. 124 and *ff*.). Thus, 107 relatives of 16 of the 17 presumed victims who were killed[462] have received compensation under the contentious administrative jurisdiction.[463] These next of kin obtained reparation after signing a conciliation agreement with the Ministry of Defense that was endorsed by the Council of State.[464] In addition, it appears that 5 family members have not received compensation under the contentious administrative jurisdiction for the death of their next of kin, even though they have exhausted this remedy.[465]

335. As regards those who were injured by the bombardment, 11 of these 27 victims received compensation under the Colombian contentious administrative jurisdiction. Some of them also received compensation as next of kin of those who died.[466] In addition, two of the injured victims were not compensated, even though they had recourse to the contentious administrative jurisdiction.[467] There is no evidence whether the remaining 14 injured victims had recourse to this

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462 In the case of victim 17, according to the representatives, the young man Luis Enrique Parada Ropero was raised from an early age by Myriam Soreira Tulibila Macualo (merits file, tome 1, folio 240). However, she has received reparation for the death of her son, Oscar Esneider Vanegas Tulibila, and not for the death of Luis Enrique Parada Ropero. This means that she did not have recourse to the contentious-administrative jurisdiction in relation to the death of the youth Parada. In addition, according to the representatives, some members of the family of Luis Enrique Parada live in the state of Barinas in the Bolivarian Republic of Venezuela, and they listed the names of uncles (brothers of his father); Isidro, Andres and Isaías Paradas, however, they do not appear as victims (merits file, tome 1, folio 240).

463 *Cf.* Judgment of the Contentious Administrative Court of Arauca, Mario Galvis Gelvez *et al.*, case file No. 81-001-23-2000-348, May 20, 2004 (evidence file, tome 20, folio 10180 to 10274), the Conciliation Agreement, Third Section, Council of State, Mario Galvis Gelves *et al.*, proceedings No. 28259, November 8, 2007 (evidence file, tome 3, folios 1044 and 1045), and the approval of the Conciliation Agreement, Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007(evidence file, tome 2, folios 751-806). In this judgment, the conciliation was approved between the Nation and 19 of the 23 joint litigators, it was declared that the proceedings were terminated with regard to them, and the agreement was not approved with regard to the remaining four, ordering that the proceedings should continue in their regard. Subsequently, in a judgment of November 19, 2008, the Nation-Ministry of Defense was declared materially responsible for the damage caused to the four remaining co-litigants. See Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, November 19, 2008 (evidence file, tome 3, folios 1047-1127).

464 By Decision 979 of the Ministry of National Defense of March 18, 2009, the conciliation agreement approved on December 13, 2007, was complied with (evidence file, tome 2, folios 1129 to 1146), and by Decision 1560 of the Ministry of National Defense of April 27, 2009, the Judgment of November 19, 2008, was complied with (evidence file, tome 3, folios 1148-1155), so that the Nation-Ministry of Defense paid the representative of the presumed victims a total of five thousand seven hundred and fifty-eight million seven hundred and fifty-nine thousand and nineteen pesos and twenty cents (5,758,759,019.20 pesos). Decision 979 provided compensation to 79 family members and Decision 1560 provided compensation to 30 family members. Two family members of a deceased victim (Carmen Edilia González Ravelo, wife of Salomón Neite; and Marcos Neite González, son of Salomón Neite) were compensated in both decisions.

465 Nerys Duarte Cárdenas, Andersson Díaz Duarte and Davinson Duarte Cárdenas had recourse to the contentious administrative jurisdiction, but did not receive reparation because they had not proved the family relationship. In addition, Lucero Talero Sánchez, companion of Levis Orlando Martínez, did not receive compensation either, because she had not proved that she lived with the victim; however, her children did receive reparation as his children. In the case of María Elena Carreño, she did not prove that she was the sister of the deceased victim Levis Orlando Martínez (evidence file, tome 2, folios 782 and 783).

466 Namely: Edwin Fernando Vanegas Tulibila (brother of Oscar Esneider Vanegas Tulibila), Milciades Bonilla Ostos (permanent companion of Nancy Ávila Abaunza), Mario Galvis Gelves (husband of Teresa Mojica Hernández), Mónica Bello Tilano (mother of Egna Margarita Bello Tilano and sister of Katherine Cárdenas Tilano), Amalio Neite González (son of Salomón Neite), Marcos Aurelio Neite Méndez (brother of Luis Carlos Neite Méndez), Erinson Olimpo Cárdenas Tilano (brother of Katherine Cárdenas Tilano) and Neftalí Neite González (son of Salomón Neite).

467 They are María Cenobia Panqueva and Neftalí Neite González. In the case of the former, the loss of employment capacity was not determined, and in that of the latter, no medical record was provided so that it was not possible to determine the loss of employment capacity. See Judgment of the Contentious Administrative Court of Arauca, Mario Galvis Gelvez *et al.*, case file No. 81-001-23-2000-348, May 20, 2004 (evidence file, tome 20, folio 10253); Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007 (evidence file, tome 2, folio 783), and Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, November 19, 2008 (evidence file, tome 3, folio 1081-1082).

jurisdiction.[468] Regarding their next of kin of the injured victims, with the exception of six family members of Amalio Neite González,[469] none of them received compensation under the contentious administrative jurisdiction.

336. Taking into account that the contentious courts have established reparations in this case based on what the victims claimed and even conciliated, and in keeping with the principle of complementarity, the Court finds that it is not appropriate to order additional monetary reparations, for either pecuniary or non-pecuniary damage in favor of the next of kin of the victims who died, or of those injured during the events, who have already received reparation under the domestic system of justice.

337. Nevertheless, the Court must determine the situation of the injured victims (*supra* para. 335), as well as of five family members of two deceased victims,[470] and the next of kin of the injured victims, who did not have recourse to the domestic contentious-administrative jurisdiction. In this regard, the Court finds that the State must grant and execute, within one year and using a prompt domestic mechanism, the pertinent compensation and indemnities for pecuniary and non-pecuniary damage, if appropriate, which must be established based on the objective, reasonable and effective criteria of the Colombian contentious-administrative jurisdiction. The next of kin of victims who consider that they are beneficiaries of the provisions of this paragraph should approach the corresponding State authorities within three months at the latest of notification of this Judgment.

338. The preceding decision (*supra* para. 337) does not affect the next of kin of victims who were not petitioners, who have not been represented in the proceedings before the Commission and the Court, and who have not been included as victims or injured parties in this Judgment, insofar as it does not preclude any actions that they might file at the domestic level.

E. Costs and expenses

339. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.[471]

340. In their pleadings and motions brief, the representatives asked the Court to order the State to reimburse the expenses in which they had incurred.[472] Then, in their final arguments brief, the representatives asked that the Court order the payment of the costs and expenses arising from attending the public hearing held at the seat of the Court on June 27 and 28, 2012.[473]

341. The State indicated in relation to the "payment of the costs and expenses in the proceedings" that these "are excessive," because approximately US$36,000 was requested and the

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[468] The State only referred to the sisters Maribel Daza Rojas and Rusmira Daza Rojas, as injured victims who had not had recourse to the contentious administrative jurisdiction.

[469] They are Carmen Edilia González Ravelo, who received compensation for the injuries to her son Amalio Neite González, as well as her siblings Neftalí, Neila, Salomón, Elizabeth and Marcos Neite González.

[470] Nerys Duarte Cárdenas (permanent companion of Carmen Antonio Díaz), Andersson Duarte Cárdenas (son of Carmen Antonio Díaz), Davinson Duarte Cárdenas (son of Carmen Antonio Díaz), Lucero Talero Sánchez (permanent companion of Levis Orlando Martínez Carreña) and María Elena Carreño (sister of Levis Orlando Martínez Carreña).

[471] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 385.

[472] In particular they indicated the expenses incurred by the "Joel Sierra" Human Rights Foundation (US$4,000), the *Asociación para la Promoción Social Alternativa Minga* (US$12,000), the *Humanidad Vigente Corporación Jurídica* (US$10,000) and the "José Alvear Restrepo" Lawyers' Group (US$9,000). In addition, it was mentioned that the representatives David Stahl, Lisa Meyer and Douglass Cassel acted at the request of the Colombian organizations *pro-bono,* and therefore did not ask for costs and expenses.

[473] In this regard, the representatives indicated that the delegation of the representatives of the victims consisted of nine persons, lawyers, witnesses and an expert witness, and the expenses per person were approximately US$1,400.

reasonable amounts granted by the Court under this heading range from US$2,000 to US$25,000."[474]

342. The Court reiterates that, in accordance with it case law,[475] costs and expenses are included in the concept of reparation, because the activities deployed by the victims in order to obtain justice at both the national and the international level entail disbursements that must be compensated when the State's international responsibility has been declared in a guilty verdict. Regarding the reimbursement, the Court must make a prudent assessment of their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, as well as those arising during the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[476]

343. The Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence that support them, must be presented to the Court at the first procedural moment granted to them; that is, in the pleadings and motions brief, without prejudice to these claims being updated subsequently, in keeping with the new costs and expenses incurred as a result of the proceedings before this Court."[477] In addition, the Court reiterates that it is not sufficient to forward probative documents, but the parties must submit arguments relating the evidence to the fact that it represents and that, in the case of financial disbursement, the headings and their justification are clearly explained.[478]

344. In the instant case, the Court observes that the representatives did not submit any evidence corresponding to the costs and expenses of the proceedings. Despite this, it can be presumed that the representatives incurred expenses in the processing of the case before the inter-American system. Consequently, the Court establishes that the State must pay, for costs and expenses, the amount of US$5,000.00 (five thousand United States dollars) which will be divided between the "Joel Sierra" Human Rights Foundation, the *Asociación para la Promoción Social Alternativa Minga,* the *Humanidad Vigente Corporación Jurídica* and the "José Alvear Restrepo" Lawyers' Group as appropriate.

F. Means of complying with the payments ordered

345. The State must reimburse the costs and expenses established in this Judgment directly to the organizations indicated herein, within one year of notification of this Judgment.

346. The State must comply with the pecuniary obligations by payment in United States dollars or in Colombian pesos.

347. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts determined within the indicated time frame, the State must deposit the said amounts in their favor in an account or certificate of deposit in a solvent Colombian financial institute, in United States dollars, and in the most favorable conditions allowed

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474 In this regard, the State referred to the Court's case law in relation to the establishment of these amounts; specifically, it indicated the following cases: *Case of Caballero Delgado and Santana v. Colombia. Reparations and costs.* Judgment of January 29, 1997. Series C No. 31, and *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.*

475 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs,* para. 79, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 389.

476 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs,* para. 82, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 389.

477 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v.* Ecuador. *Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 390.

478 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*, para. 277 and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, para. 390.

by law and banking practice. If, after 10 years the sum allocated has not been claimed, the amounts must be returned to the State with the interest accrued.

348. The amounts allocated by the State, as established (*supra* para. 337), must be delivered to the victims in full and may not be affected or conditioned by current or future taxes or charges.

349. If the State should incur in arrears, it must pay interest on the amount owed, corresponding to banking interest on arrears in Colombia.

IX
OPERATIVE PARAGRAPHS

350. Therefore,

THE COURT

DECIDES,

unanimously, that:

1. To reject the two preliminary objections filed by the State, regarding the Court's alleged lack of competence *ratione materiae* and the alleged failure to exhaust domestic remedies, in the terms of paragraphs 21 to 26 and 33 to 39 of this Judgment.

2. To determine that the act of the State entitled "acknowledgement of responsibility" for the alleged violation of Articles 8 and 25 of the American Convention on Human Rights does not have legal effects, in the terms of paragraphs 141 to 153 of this Judgment.

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of those who died in the events of December 13, 1998, in Santo Domingo, and in relation to Article 19 thereof with regard to the child victims who died, all of them identified in Annex 1, as established in paragraphs 187 to 284 of this Judgment.

2. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the persons who were injured in the events of December 13, 1998, in Santo Domingo, and in relation to Article 19 thereof with regard to the child victims, all of them identified in Annex II, as established in paragraphs 187 to 241 of this Judgment.

3. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims of the events that occurred in Santo Domingo on December 13, 1998, as established in paragraphs 242 to 244 of this Judgment.

4. The State is responsible for the violation of the right to property, recognized in Article 21 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of de Mario Galvis, Víctor Palomino, Margarita Tilano, María Cenobia Panqueva and Olimpo Cárdenas, as established in paragraphs 269 to 282 hereof.

5. The State is responsible for the violation of the right to freedom of movement and residence, recognized in Article 22 of the American Convention on Human Rights, in relation to

Articles 1(1) and 5(1) thereof, to the detriment of those who were displaced owing to the facts of the case, as established in paragraphs 255 to 268 hereof.

6. The alleged violation of the right recognized in Article 11 of the American Convention on Human Rights has not been proved, for the reasons given in paragraphs 286 to 289 of this Judgment.

7. The alleged violation of the rights recognized in Articles 8 and 25 of the American Convention on Human Rights has not been proved, for the reasons indicated in paragraphs 154 to 173 of this Judgment; nevertheless, in light of the general obligation contained in Article 1(1) of the American Convention on Human Rights, the State must continue the investigations and the administrative and judicial proceedings that are underway and, as appropriate, continue any others that are required in order to make a complete determination of the facts of this case and the corresponding responsibilities, as established in paragraph 297 of this Judgment.

8. It is not appropriate to analyze the facts of this case in light of Article 2 of the Convention, for the reasons indicated in paragraphs 245 and 246 of this Judgment.

AND ESTABLISHES,

unanimously, that:

1. This Judgment constitutes *per se* a form of reparation

2. The State must organize a public act to acknowledge international responsibility for the facts of this case, as established in paragraphs 301 and 302 of this Judgment.

3. The State must make the publications ordered as established in paragraph 303 of this Judgment.

4. The State must provide comprehensive health care treatment to the victims through its specialized health institutions, as established in paragraph 309 of this Judgment.

5. The State must grant and execute, within one year, using an expedite internal mechanism, the pertinent compensation and indemnities for pecuniary and non-pecuniary damage, in favor of the injured victims and the next of kin of victims who have not received reparation under the domestic contentious-administrative jurisdiction, in the terms of paragraphs 337 and 345 to 349 of this Judgment.

6. The State must pay the amounts established in paragraph 344 of this Judgment, as reimbursement of costs and expenses.

7. The Court will monitor full compliance with the Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention, and will conclude this case when the State has complied fully with all its provisions.

8. Within one year of its notification, the State must provide the Court with a report on the measures taken to comply with this Judgment

Done, at San José, Costa Rica, on November 30, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

ANNEX I. PERSONS DECEASED

Adults
1. María Yolanda Rangel
2. Teresa Mojica Hernández
3. Edilma Leal Pacheco
4. Nancy Ávila Castillo
5. Luis Orlando (Levis Hernando) Martínez Carreño
6. Luis Enrique Parada Ropero
7. Salomón Neite
8. Arnulfo Arciniégas Veladia (or Calvo)
9. Pablo Suárez Daza
10. Carmen Antonio Díaz Cobo
11. Rodolfo Carrillo
Children
12. Jaime Castro Bello
13. Egna Margarita Bello Tilano
14. Luis Carlos Neite Méndez
15. Deysi Katherine (or Catherine) Cárdenas Tilano
16. Oscar Esneider Vanegas Tulibila
17. Geovany Hernández Becerra

ANNEX II. PERSONS INJURED.

Adults
1. Fernando Vanegas
2. Milciades Bonilla Ostos
3. Ludwing Vanegas
4. Xiomara García Guevara
5. Mario Galvis
6. Freddy Monoga Villamizar (or Freddy Villamizar Monoga)
7. Mónica Bello Tilano
8. Maribel Daza
9. Amalio Neite González
10. Marian Arévalo
11. José Agudelo Tamayo
12. María Panqueva
13. Pedro Uriel Duarte Lagos
14. Ludo Vanegas
15. Adela Carrillo
16. Alcides Bonilla
17. Fredy Mora
Children
1. Alba Yaneth García Guevara
2. Marcos Aurelio Neite Méndez
3. Erinson Olimpo Cárdenas
4. Hilda Yuraime Barranco
5. Ricardo Ramírez
6. Yeimi Viviana Contreras
7. Maryori Agudelo Flórez
8. Rosmira Daza Rojas
9. Neftalí Neite
10. Lida Barranca

ANNEX III. NEXT OF KIN OF DECEASED AND INJURED VICTIMS

Next of kin of deceased and injured victims	
1	**Mario Galvis Gelves** (husband of Teresa Mojica Hernández)
2	**John Mario Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves)
3	**Luis Alberto Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves
4	**Nelson Enrique Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves)
5	**Roberto Yamid Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves)
6	**Nelci Moreno Lizarazo** (permanent companion of Rodolfo Carrillo)
7	**Nidia Carrillo Moreno** (daughter of Rodolfo Carrillo)
8	**Leidy Liliana Carrillo Moreno** (daughter of Rodolfo Carrillo)
9	**Deivis Daniela Moreno Lizarazo** (posthumous daughter of Rodolfo Carrillo)
10	**Tulia Mora de Carrillo** (mother of Rodolfo Carrillo)
11	**Edgar Carrillo Mora** (brother of Rodolfo Carrillo)
12	**Irma Nelly Carrillo Mora** (sister of Rodolfo Carrillo)
13	**Nelcy Carrillo Mora** (sister of Rodolfo Carrillo)
14	**Marleny Carrillo Mora** (sister of Rodolfo Carrillo)
15	**Luis Enrique Carrillo Mora** (brother of Rodolfo Carrillo)
16	**Ana Mirián Durán Mora** (sister of Rodolfo Carrillo)
17	**Rosalbina Durán Mora** (sister of Rodolfo Carrillo)
18	**Graciela Durán Mora** (sister of Rodolfo Carrillo)
19	**Carmen Edilia González Ravelo** (wife of Salomón Neitey, mother of Amalio Neite González and of Neftalí Neite González, grandmother/surrogate mother of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez)
20	**Romelia Neite de López** (sister of Salomón Neite and aunt of Amalio Neite González and of Neftalí Neite González)
21	**Neila Neite González** (aunt of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, daughter of Salomón Neite and sister of Amalio Neite González and of Neftalí Neite González)
22	**Salomón Neite González** (uncle of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, son of Salomón Neite and brother of Amalio Neite González and of Neftalí Neite González)
23	**Neftalí Neite González** (uncle of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, son of Salomón Neite and brother of Amalio Neite González)
24	**Amalio Neite González** (uncle of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, son of Salomón Neite and brother of Neftalí Neite González)
25	**Elizabeth Neite González** (aunt of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, daughter of Salomón Neite and sister of Amalio Neite González and of Neftalí Neite González)

Next of kin of deceased and injured victims	
26	**Marcos Neite González** (father of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, son of Salomón Neite, brother of Amalio Neite González and of Neftalí Neite González, permanent companion of María Yolanda Rangel)
27	**Marcos Aurelio Neite Méndez** (brother of Luis Carlos Neite Méndez, stepson of María Yolanda Rangel, nephew of Neftalí Neite González and Amalio Neite González, grandson of Salomón Neite)
28	**Leyda Shirley Neite Méndez** (sister of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, stepdaughter of María Yolanda Rangel, niece of Neftalí Neite González and Amalio Neite González, granddaughter of Salomón Neite)
29	**Vilma Yadira Neite Méndez** (sister of Luis Carlos Neite Méndez and of Marcos Aurelio Neite Méndez, stepdaughter of María Yolanda Rangel, niece of Neftalí Neite González and Amalio Neite González, granddaughter of Salomón Neite)
30	**Yexi Coromoto Arciniegas Rangel** (daughter of María Yolanda Ranger)
31	**Jorge Henry Vanegas Ortíz** (father of Oscar Esneider Vanegas Tulibila and of Edwin Fernando Vanegas Tulibila)
32	**Mirian Soreira Tulibila Macualo** (mother of Oscar Esneider Vanegas Tulibila and of Edwin Femando Vanegas Tulibila, and surrogate mother of Luis Enrique Parada Ropero)
33	**Jorge Mario Vanegas Tulibila** (brother of Oscar Esneider Vanegas Tulibila and of Edwin Fernando Vanegas Tulibila and surrogate brother of Luis Enrique Parada Ropero)
34	**Yaritza Lisbeth Vanegas Tulibila** (sister of Oscar Esneider Vanegas Tulibila and of Edwin Fernando Vanegas Tulibila, and surrogate sister of Luis Enrique Parada Ropero)
35	**Edwin Fernando Vanegas Tulibila** (brother of Oscar Esneider Vanegas Tulibila and surrogate brother of Luis Enrique Parada Ropero)
36	**Nerys Duarte Cárdenas** (permanent companion of Carmen Antonio Díaz)
37	**Andersson Duarte Cárdenas** (son of Carmen Antonio Díaz)
38	**Davinson Duarte Cárdenas** (son of Carmen Antonio Díaz)
39	**Clemencia Cobo** (mother of Carmen Antonio Díaz)
40	**Rafael Díaz Ramírez** (father of Carmen Antonio Díaz)
41	**Giovanni Díaz Cobo** (brother of Carmen Antonio Díaz)
42	**Dionel Díaz Cobo** (brother of Carmen Antonio Díaz)
43	**Ana Lucía Díaz Cobo** (sister of Carmen Antonio Díaz)
44	**Sonia Díaz Cobo** (sister of Carmen Antonio Díaz)
45	**Luz Elena Díaz Cobo** (sister of Carmen Antonio Díaz)
46	**Norberto Leal** (father of Edilma Leal Pacheco)
47	**Benilda Pacheco de Leal** (mother of Edilma Leal Pacheco)
48	**Norelis Leal Pacheco** (sister of Edilma Leal Pacheco)
49	**Rubiela Leal Pacheco** (sister of Edilma Leal Pacheco)

Next of kin of deceased and injured victims	
50	**Edwin Leal Pacheco** (brother of Edilma Leal Pacheco)
51	**José Rafael Hernández Mojica** (father of Geovani Hernández Becerra)
52	**María Elida Becerra Rubio** (mother of Geovani Hernández Becerra)
53	**Diana Carolina Hernández Becerra** (sister of Geovani Hernández Becerra)
54	**Erika Yusdey Hernández Becerra** (sister of Geovani Hernández Becerra)
55	**Jorge Luis Hernández Becerra** (brother of Geovani Hernández Becerra)
56	**Luz Elena Hernández Becerra** (sister of Geovani Hernández Becerra)
57	**Emérita Hernández Becerra** (sister of Geovani Hernández Becerra
58	**Bertha Yusdey Hernández Bacerra** (sister of Geovani Hernández Becerra)
59	**Lucero Talero Sánchez** (permanent companion of Levis Orlando Martínez Carreña)
60	**Yesica Martínez Talero** (daughter of Levis Orlando Martínez Carreño)
61	**Doris Adriana Martínez Talero** (daughter of Levis Orlando Martínez Carreño)
62	**Luis Eduardo Martínez Talero** (son of Levis Orlando Martínez Carreña)
63	**Teodora Carreña Alarcón** (mother of Levis Orlando Martínez Carreña)
64	**Exelino Martínez Rodríguez** (father of Levis Orlando Martínez Carreña)
65	**Pedro Virgilio Martínez Carreño** (brother of Levis Orlando Martínez Carreña)
66	**José Vicente Martínez Carreño** (brother of Levis Orlando Martínez Carreña)
67	**Manuel Antonio Martínez Carreño** (brother of Levis Orlando Martínez Carreña)
68	**Claudia Exelina Martínez Carreño** (sister of Levis Orlando Martínez Carreña)
69	**Ana Fidelia Martínez Carreño** (sister of Levis Orlando Martínez Carreña)
70	**María Elena Carreño** (sister of Levis Orlando Martínez Carreña)
71	**Milciades Bonilla Ostos** (permanent companion of Nancy Ávila Abaunza)
72	**Nancy Chaquira Bonilla Ostos** (daughter of Nancy Ávila Abaunza and of Milciades Bonilla Ostos)
73	**Carmen Elisa Abaunza Castillo** (mother of Nancy Ávila Abaunza)
74	**Jorge Eliécer Ávila** (father of Nancy Ávila Abaunza)
75	**Sandy Yomaira Ávila** Castillo (sister of Nancy Ávila Abaunza)
76	**Pedro Ávila Castillo** (brother of Nancy Ávila Abaunza)
77	**Omar Ávila Castillo** (brother of Nancy Ávila Abaunza)
78	**Gladys Cecilia Ávila Castillo** (sister of Nancy Ávila Abaunza)

Next of kin of deceased and injured victims	
79	**Luz Dary Abaunza Castillo** (sister of Nancy Ávila Abaunza)
80	**Tiberio Barraco Téllez** (father of Hilda Yuraime Barranco)
81	**Eliberta Bastilla** (mother of Hilda Yuraime Barranco)
82	**Yilmer Orledy Barranco Bastilla** (brother of Hilda Yuraime Barranco)
83	**Edwin Fabian Barranco Bastilla** (brother of Hilda Yuraime Barranco)
84	**Anyi Marieth Barranco Bastilla** (sister of Hilda Yuraime Barranco)
85	**Margarita Tilano Yañez** (mother of Katherine Cárdenas Tilano, Mónica Bello Tilano and Erinson Olimpo Cárdenas Tilano, grandmother of Egna Margarita Bello Tilano and Jaime Castro Bello)
86	**Olimpo Cárdenas Castañeda** (father of Katherine Cárdenas Tilano and Erinson Olimpo Cárdenas Tilano)
87	**Wilmer Yesid Cárdenas Tilano** (brother of Katherine Cárdenas Tilano, Mónica Bello Tilano and Erinson Olimpo Cárdenas Tilano, uncle of Egna Margarita Bello Tilano and Jaime Castro Bello)
88	**Erinson Olimpo Cárdenas Tilano** (brother of Katherine Cárdenas Tilano and Mónica Bello Tilano, uncle of Egna Margarita Bello Tilano and Jaime Castro Bello)
89	**Norma Constanza Bello Tilano** (sister of Katherine Cárdenas Tilano, Mónica Bello Tilano and Erinson Olimpo Cárdenas Tilano, aunt of Egna Margarita Bello Tilano and Jaime Castro Bello)
90	**Mónica Bello Tilano** (mother of Egna Margarita Bello Tilano, sister of Katherine Cárdenas Tilano and Erinson Olimpo Cárdenas Tilano, aunt of Jaime Castro Bello)
91	**Inés Yurely Bello Tilano** (mother of Jaime Castro Bello, sister of Katherine Cárdenas Tilano, Mónica Bello Tilano and Erinson Olimpo Cárdenas Tilano, aunt of Egna Margarita Bello Tilano)
92	**Camilo Andrés Quintana Bello** (son of Mónica Bello Tilano, brother of Egna Margarita Bello Tilano, nephew of Katherine Cárdenas Tilano and Erinson Olimpo Cárdenas Tilano, cousin of Jaime Castro Bello)
93	**Angie Camila Castro Bello** (sister of Jaime Castro Bello, niece of Katherine Cárdenas Tilano, Mónica Bello Tilano and Erinson Olimpo Cárdenas Tilano, cousin of Egna Margarita Bello Tilano)
94	**Orlando Castro Londoño** (father of Jaime Castro Bello)
95	**Deicy Damaris Cedano** (permanent companion of Pablo Suárez Daza)
96	**Jeinny Damaris Cedano** (daughter of Pablo Suárez Daza)
97	**Pablo Esnober Cedano** (son of Pablo Suárez Daza)
98	**Ascensión Daza Galindo** (mother of Pablo Suárez Daza)
99	**Eliu Suárez Daza** (brother of Pablo Suárez Daza)
100	**Eliécer Suárez Daza** (brother of Pablo Suárez Daza)
101	**José Alirio Suárez Daza** (brother of Pablo Suárez Daza)
102	**Wilson Suárez Daza** (brother of Pablo Suárez Daza)
103	**Nilsa de Jesús Díaz Herrera** (permanent companion of Arnulfo Arciniegas)

Next of kin of deceased and injured victims	
104	**José David Rincón Díaz** (stepson of Arnulfo Arciniegas)
105	**Florinda Calvo Rey** (mother of Arnulfo Arciniegas)
106	**Dionisio Arciniegas Velandia** (father of Arnulfo Arciniegas)
107	**Jorge Eliécer Arciniegas Calvo** (brother of Arnulfo Arciniegas)
108	**Diomedes Arciniegas Calvo** (brother of Arnulfo Arciniegas)
109	**Olinto Arciniegas Calvo** (brother of Arnulfo Arciniegas)
110	**Gladys Arciniegas Calvo** (sister of Arnulfo Arciniegas)
111	**Omaira Arciniegas Calvo** (sister of Arnulfo Arciniegas)
	Next of kin who were not identified in the Merits Report, but who also received reparation under the Conciliation Agreement approved by the Council of State
112	**Oscar Andrey Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves)
113	**Albeiro Galvis Mojica** (son of Teresa Mojica Hernández and of Mario Galvis Gelves)
114	**Norberto Arciniegas Calvo** (brother of Arnulfo Arciniegas)
115	**Argemiro Arciniegas Calvo** (brother of Arnulfo Arciniegas)
116	**Orlando Arciniegas Calvo** (brother of Arnulfo Arciniegas)
117	**Erlinda Arciniegas Calvo** (sister of Arnulfo Arciniegas)