

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF JUNE 5, 2012

CASE OF THE SANTO DOMINGO MASSACRE v. COLOMBIA

HAVING SEEN:

1. The brief submitting the case presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") on July 8, 2011, wherein it offered two expert reports, for which it noted the purpose of the reports but did not identify one of the proposed expert witnesses.
2. The communication of August 9, 2011, wherein the Commission presented the professional resume for Mr. Andrés Celis, offered as a second expert witness.
3. The brief containing pleadings, motions, and evidence and its annexes (hereinafter "brief containing pleadings and motions") presented by the representatives of the alleged victims¹ (hereinafter "the representatives") of November 21, 2011, wherein they offered 20 statements of the alleged victims, a testimonial statement, and five expert reports.
4. The brief raising preliminary objections, answer to the application, and observations to the brief containing pleadings and motions and its annexes (hereinafter "answer brief"), received on March 9, 2012, wherein the Republic of Colombia (hereinafter "the State") offered a statement and five expert reports, without identifying the proposed individuals. The State expressed, *inter alia*, that it would provide the names and curriculum vitae of the experts to the Court "as soon as possible"; it requested, if considered appropriate, the establishment of a period for this to be done; and alternatively requested that, if the expert evidence was not admitted, "the [Court] offer the names of international experts." Moreover, it expressed that, "in any [case], the State [...] would take on the costs of the experts assigned *ex officio* by the Court."
5. The notes of the Secretariat of April 25, 2012, wherein the parties were informed that the Court would hold a public hearing in this case during its XCV Regular Period of Sessions,

¹ The alleged victims in this case, appointed the Corporación Colectiva de Abogados "Jose Alvear Restrepo" (CCAJAR), Humanidad Vigente Corporación Jurídica (HCVJ), la Fundación de Derechos Humanos [The Human Rights Foundation] "Joel Sierra", the Asociación para la Protección Social Alternativa [the Association for Alternative Social Protection] "Minga", and attorneys Douglass Cassel, David Stahl, and Lisa Meyer.

and requested that they, pursuant to the terms of Article 46(1) of the Rules of Procedure², provide a final list of declarants. Moreover, in light of the principle of procedural fairness and in application of the foregoing Article of the Rules of Procedure, a request was made for each party to indicate which declarants could render their statement before a notary public (*affidavit*), and which could be summoned to render their statement at the public hearing.

6. The brief of May 8, 2012, wherein the representatives presented their final list and offered statements provided by affidavit of fourteen alleged victims, of one witnesses, and four expert witnesses (of whom they requested the replacement of one of the initially offered expert witnesses), as well as the statements of six alleged victims and an expert witness to be heard during the public hearing.

7. The communication of May 9, 2012, wherein the Commission confirmed the offer of one expert witness for the hearing and gave up another expert witness.

8. The brief and its annexes of May 9, 2012, wherein the State provided its final list of declarants and offered two expert opinions and one statement for the hearing, as well as two expert opinions by affidavit. In this brief, the State specified the names of the expert witnesses that it offered, provided their curriculum vitae, and reiterated its "subsidiary" request. (*supra* Having Seen clause 4).

9. The notes of the Secretariat of May 10, 2012, wherein the final lists of the declarants was provided and the parties were informed that, pursuant to Article 46 of the Rules of Procedure and following instructions by the President, they had until May 16, 2012, to present the observations they deemed necessary.

10. The briefs of May 15 and 16, 2012, wherein the representatives, the Commission, and the State provided their observations to the final list of declarants.

11. The note of the Secretariat of May 18, 2012, wherein, following instructions of the President of the Court, and notwithstanding what is decided regarding the alleged time-barred nature of the expert evidence offered by the State, in application of Article 48(3) of the Rules of Procedure of the Court, the State was required to provide the objections presented by the representatives to the four persons proposed as expert witnesses in its final list of declarants in order that, by no later than May 23, 2012, they present observations.

12. The communication of May 21, 2012, wherein the parties were informed the date of the hearing.

13. The communication of May 22, 2012, wherein the State requested an extension of three days in order to present its observations to the four persons offered as expert witnesses given the objections of the representatives, as well as the note of the Secretariat dated the following day, wherein, following instructions of the President, the extension was granted until May 25, 2012.

14. The briefs of May 22 and 23, 2012, wherein the representatives and the Commission presented, respectively, their observations to the preliminary objections and the "acknowledgment of responsibility" effectuated by the State.

15. The briefs of May 24 and 25, 2012, wherein Messers. Héctor Alfredo Amaya Cristancho, Efraín Acosta Jaramillo, Máximo Duque, and Juan Pablo Franco Jiménez, offered as expert witnesses by the State, presented their observations to the objections presented regarding their participation in this case.

16. The brief of May 24, 2012, wherein the representatives made reference to the request for an extension presented by the State and reiterated other arguments regarding the admissibility of the evidence the State had offered.

² Rules of Procedure approved by the Court in its LXXXV Regular Period of Sessions held on November 16 to 28, 2009.

17. The brief of May 29, 2012, wherein the State presented arguments regarding the evidence it had offered in relation to the observations of the representatives.

18. The note of the Secretariat of May 31, 2012, wherein the State and representatives were informed that, because they had not been requested nor had their presentation been considered in the Rules of Procedure, the two aforementioned briefs (*supra* Having Seen clause 16 and 17) were provided to the President in order for their admissibility or other matters to be assessed.

CONSIDERING THAT:

1. The offer and admission of evidence, as well as the summons of the alleged victims, witnesses, and expert witnesses, is regulated by Articles 35(1)(f), 40(2)(c), 41(1)(c), 46, 47, 48, 49, 50, 52(3), and 57 of the Rules of Procedure of the Court.

2. The Court guaranteed the parties the right to defense regarding the evidence offered in the brief submitting the case, the brief containing pleadings and motions, and the answer brief, as well as the final lists.

3. In regard to the statements offered by the parties that had not been contested, this Presidency considers it convenient to gather them, in order for the Court to assess their value at the opportune procedural moment, within the context of the existing body of evidence and pursuant to the rules of sound judgment. The purpose of these statements and the manner in which they will be received shall be established in the operative part of this decision (*infra* operative paragraphs 1 and 5).

4. Below, the President will assess in a particular manner: a) the admissibility of the expert evidence offered by the State and its "subsidiary" request for the Court to provide expert opinions; b) the objections of the representatives to the statements offered by the State; c) the objections of the State to the statements offered by the representatives; d) the request to replace an expert witness offered by the representatives; e) the State's request to reject the expert opinions offered by the representatives; f) the admissibility of expert evidence offered by the Inter-American Commission; g) the manner in which the statements and expert reports would be received; h) the final oral and written arguments and observations; and i) the request of the State and the representatives to incorporate documentary elements.

a) Admissibility of the expert evidence offered by the State and its "subsidiary" request for the Court to provide expert opinions.

5. In its answer brief, the State requested:

"[a]s a primary claim, and pursuant to the Rules of the Court [...] that expert evidence be decreed with international experts that be announced to follow. As such, the names and resumes of the expert witnesses will be provided to the Court as soon as possible. Were the Court to agree, the State requests that a period be established to present these names. [...]"

1. Expert report of an expert in explosives.

The expert report given by an expert in explosives, is aimed at accurately determining the characteristics of the explosive device that caused the injuries, deaths, and destruction in Santo Domingo, Arauca. This will establish a high degree of certainty, that the events sub judice resulted from the action of a homemade bomb installed by the FARC, in a truck parked on the only route to the hamlet, and not due to the impact of a device AN-MIA21 launched by the Colombian Air Force.

[...]

2. Expert report of an expert in medical forensics.

The expert opinion given by an expert in forensic medicine, is aimed at showing that the evidence that makes up the body of evidence do not prove that the injuries and deaths in Santo Domingo on December 13, 1998, were caused by air – land weaponry, implemented by the Colombian Air Force.

[...]

3. Expert in chain of custody.

The expert opinion given by an expert on chain of custody, is aimed at showing that the evidence used in the first and second criminal proceedings to convict members of the Colombian security forces for allegedly launching a AN-MIA2 device on the hamlet of Santo Domingo, were obtained without complying with protocols on chain of custody. [...]

4. High level expert on cassation.

The statement of an expert of the highest level, is aimed at explaining to [...] the Court the manner in which Colombia handles extraordinary appeals of cassation, its purpose, procedures, and aims. [...]

5. Expert report by an expert in forced displacement.

The expert report given by an expert in forced displacement, is aimed at establishing and clarifying the issues related to the alleged violation of Article 22(1) of the Convention against the alleged victims by the Colombian State. Similarly, it should be noted that the intervention of a expert will facilitate obtaining accurate conclusions. Therefore, the expert evidence offered is relevant and useful. [...]

7. Subsidiary claim

Under the circumstance that the principal claim is not admitted, the Colombian government very respectfully requests that if the Court itself so considers, it may provide the names of international experts, whether in regard to expert evidence on the matters set forth above or any others deemed relevant and necessary to achieve clarity and truth. In any event, the Colombian State will assume the costs of the expert witnesses that the Court orders *ex officio*."

6. In its final list of declarants, the State offered four expert witnesses and one witness, in order to render statements at the hearing and via affidavit. At that time, the State identified the persons it proposed as experts, provided their curriculum vitae, and maintained the purpose of the reports that had been initially proposed. Moreover, the State reiterated its "subsidiary request." (*supra* Considering clause. 5).

7. On its behalf, in the brief on observations to the final list, the representatives expressed that the offer of expert witnesses is contrary to the provisions of Article 41 of the Rules of Procedure and thus time-barred. They further expressed that the State sought to remedy this problem by seeking a subsidiary or alternative claim, which suggests, given the State's negligence, that the Court officially decreed the expert nominated by the State as part of its regulatory power. Thus, the view *ex officio* provides for the experts proposed by the State within the Court's regulatory powers. Therefore, the representatives considered that the State renounced its request for expert witnesses, by not complying with the regulatory requirements of an offer. Secondly, they presented challenges and objections to those expert witnesses who were offered on the ground that there are impediments that affect their impartiality, and they do not have technical ability to render the expert reports.

8. Furthermore, the Commission stated that the mechanism used by the State for its appointment of experts is not established in the Rules of Procedure, and thus the evidence offered is time-barred, to which the State did not present any arguments, at any of the procedural opportunities it had, regarding the circumstances established in Article 57(2) regarding admissibility under exceptions. The Commission also argued that the alternative or subsidiary claim of the State does not comply with the Court's exercise of the power regarding the seeking of evidence *ex officio*, as the only evidence offered would support its position in this case, and because an offer on its behalf to fund international experts "*ex officio*" could be problematic in light of the principle of equality of arms, since it is reasonable to infer that the representatives do not necessarily have the same opportunity to make such offer.

9. Pursuant to that established in Article 41(c) of the Rules of Procedure of the Court, the opportune procedural moment for the presentation of expert evidence by the State is in its answer brief. In this case, the State did not identify in its answer those persons proposed as expert witnesses, but rather limited itself to arguing the necessity of the expert evidence, defining the purpose of the expert reports it proposed. During this opportunity, the State did not provide the curriculum vitae; it expressed that it would provide them "as soon as

possible,” which it did not do within the period of 21 days established in Article 28 of the Rules of Procedure regarding the provision of annexes to the answer brief. Subsequently, in its final list of declarants, the State offered two expert witnesses and one witness for the hearing and two expert witnesses to render statements via affidavit; it indicated the names of the expert witnesses and provided their curriculum vitae. Upon reiterating the purposes of the statements that had been initially proposed, the State once again raised its “subsidiary request” (*supra* Considering clause. 5). Until that moment, the State had not argued any of the exceptions established in Article 57(2) of the Rules of Procedure to justify its offer of evidence. As such, and notwithstanding the possible decision on the admissibility of this evidence, a period was granted to those offered as expert witnesses in order for them to present their observations (*supra* Having seen clause 11). It was not until the request for an extension (*supra* Having seen clause 13) that the State expressed that the provision of the final list and curriculum vitae of the expert witnesses “had been carried out in good faith and heeding to the requirements of the Court” and it argued, as well, that Mr. Eduardo Montealegre Lynett had been appointed as Attorney General of the Nation and that, at the time of his appointment, he was the State’s Agent in this case, a circumstance which “became a situation of *force majeure* for the State, which affected the attention given to the case and its follow-up, having to take urgent measures to assure due representation.” Thus, it requested that the Court “assess the situation as insurmountable and declare that the expert evidence offered by the State was timely.”

10. The State provided, in a tardy fashion, the identification and curriculum vitae of the proposed expert witnesses, without offering a clear explanation. Neither did it argue one of the exceptions under Article 57(2) of the Rules of Procedure, until a much later time. As noted by the State itself in its observations to the final lists (*infra* Considering clause 20), in light of Article 46 of the Rules of Procedure, the final list of declarants is just an opportunity to confirm or retract the offered evidence. Thus, the State’s failure to offer expert evidence at the appropriate time and in the appropriate manner, leads the Court to declare that it is inadmissible.³

b) Objections of the representatives to the testimony offered by the State

11. The State proposed the testimonial statement in the public hearing of Mr. Jairo García Camargo, Inspector General of the Air Force during the time of the events, as he was part of a commission of military officials “that arrived for the first time at the scene in order to establish what had taken place” in Santo Domingo on December 13, 1998.

12. The representatives considered that this testimony “forms part of a strategy to divert the investigation at an internal level by the high-ranking military officials” and that “it is aimed at a case theory that places responsibility for the massacre on a guerilla group *Fuerzas Armadas Revolucionarias de Colombia* (FARC), a hypothesis which widely exceeds the factual framework established in the Report on the Merits 61/11 of the [Commission]”. They also argued that General García Camargo “forms part of the so-called *Cuerpo de Generales y Almirantes en Retiro de las Fuerzas Militares de Colombia* [Retired Body of Generals and Commanders of the Military Forces of Colombia], an organization that [...] pushes legislative proposals that benefit military officers who have violated human rights, by way of amnesty laws and pardons, such as the reform to the military criminal forum and the denominated “legal framework for peace” that is currently before the Congress of the Republic.” Lastly, they considered that “this testimony rendered during the hearing would seriously affect the rights of the victims, who according to the high volume of existing evidentiary material, and the judicial

³ Cf. *Case of Fontevecchia and D’Amico V. Argentina*. Order of the President of the Inter-American Court of Human Rights of July 27, 2011, Considering clause nine, and *Case of Díaz Peña V. Venezuela*. Order of the President of the Inter-American Court of Human Rights of November 2, 2011, Considering clause 20. Moreover, *Case of El Mozote Massacre and neighboring areas V. El Salvador*. Order of the President of the Inter-American Court of Human Rights of March 22, 2012, Considering clause 16.

rulings, has established the responsibility of the Colombian Air Force in the commission of the Santo Domingo Massacre.”

13. President considers that, although it was raised in a timely manner and in accordance with Article 47 of the Rules of Procedure, the objection to the proposed witness does not detract from the allegation that there was a relation to the facts alleged in this case, which implies that his statement would effectively be testimonial in nature. The assessment of the representatives, in that the testimony might favor a particular hypothesis or a "case theory" by the party offering the evidence, does not affect its admissibility and possible assessment by the Court. Thus, the witness will be heard by the Court, pursuant to the purpose and manner defined in the operative paragraphs of the decision.

c) Objections of the State to the testimony offered by the representatives

14. The representatives offered the statement of Mr. Marcos Neite González, whom they identified as “an inhabitant of the community and family member of various deceased victims of the events of December 13, 1998,” to render a statement on the facts and the personal, family, and patrimonial impacts of the events; the consequences of the lack of justice and reparation, and the measures that the State should adopt for the reparation of the violations of human rights.

15. The State expressed that, pursuant to the brief containing pleadings and motions, Mr. Neite González resided in Venezuela and the day of the events was visiting the home of Mrs. Carmen Edilia González Ravelo. The State objected to this testimony, as it deemed that the representatives seek to have his testimony considered as that of an inhabitant of the community, though he is not.

16. The President considers that which was raised by the State, in regard to how Mr. Neite González is not a witness to the facts, a hypothesis that could affect the evidentiary value or weight of the proposed testimony but not its admissibility and possible assessment in the litigation. Therefore, the witness will be heard before the Court, pursuant to the purpose and manner defined in the operative part of the decision.

d) Request to replace an expert witness offered by the representatives

17. In its final list, the representatives requested the substitution of the expert witness Mr. Mario Madrid Malo, offered in a timely fashion, for that of Mrs. Elizabeth Salmón. They argued *force majeure* and presented a simple note from Mr. Madrid Malo wherein he only states “that his current health condition prevents him from being an expert witness” in this case. The representatives considered “the carrying out of this expert opinion of transcendental importance, given the serious effect on the human rights of children.” The State did not present any observations in this regard.

18. In regard to the request to replace one of the declarants, Article 49 of the Rules of Procedure establishes that “exceptionally,” “upon receiving a well-founded request” and “after hearing the opinion of the opposing party,” the Court may accept the replacement of a declarant, “as long as his or her replacement is identified,” and always respecting the object of the statement, testimony, or expert opinion originally offered.”

19. The President deems that in this case, the impossibility of summoning Mr. Madrid Malo, as noted by the representatives as the basis for their request, has been proven with the note provided by Mr. Madrid Malo. After having heard the opinion of the opposing party, which did not present observations; given that the representatives have individualized the replacement person and that the purpose of the statement that was originally offered was respected, the President admits the replacement proposed by the representatives pursuant to Article 49 of

the Rules of Procedure and provides that the statement of Mrs. Salmón be rendered by way of an affidavit, pursuant to the purpose and manner established in the operative part.

e) Request of the State to reject the two expert witnesses offered by the representatives

20. The State argued that upon comparing the purposes of the expert opinions of Mr. Carlos Lopez and Mr. Jose Quiroga, proposed by the representatives in their brief containing pleadings and motions and their final list, "serious differences are evident." It argued that the opportunity to present the purpose of the expert statements is defined in Article 40(c) of the Rules of Procedure and, in the light of Article 46 thereof, the final list of declarants is just a confirmation or retraction of the evidence offered in a timely manner in the brief containing pleadings and motions. Therefore, the State objected to such claims as it considered they were time-barred, to the extent that the purpose described in the final list implies a change to the purpose thereby openly contravening the rules of procedure, which means it is inadmissible and must be rejected.

21. In this regard, the President considers that, as affirmed by the State, the presentation of the final list of declarants does not imply an opportunity to modify the purpose of the statements originally offered. In turn, a proposal for modification of the purpose of a statement does not necessarily invalidate the possibility of receiving or hearing this statement, so long as it has been offered in a timely manner. In this case, the purpose of the expert opinions of Mr. López and Mr. Quiroga was substantially expanded in the representatives' final list of declarants, regarding that proposed in the brief containing the pleadings and motions. Given that the mentioned expert reports were offered in a timely manner by the representatives, and given that the modification of the purpose was not justified, such expert evidence shall be adduced from the originally offered purpose, pursuant to the operative part of this Order.

f) Admissibility of the evidence offered by the Inter-American Commission

22. The Commission offered the expert report of Mr. Alejandro Valencia Villa, to render a statement at the hearing on international standards that determine the State's obligations in the framework of the military operations taking place in a context of internal armed conflicts, including the obligations to the civilian population and international standards to be taken into account when investigating cases like this case. Established across the board, the expert witness will analyze the convergence and complementarity of international human rights law and international humanitarian law.

23. Pursuant to that established in Article 35(1)(f) of the Rules of Procedure, the "possible appointment of expert witnesses" can be carried out by the Inter-American Commission "when the Inter-American public order of human rights is affected in a significant manner," whose basis and purpose must be appropriately supported. The purpose of this provision makes appointment of expert witnesses by the Commission an exceptional fact, subject to this requirement which is not merely satisfied by the fact that the evidence sought to be provided relates to an alleged violation of human rights. The "Inter-American public order of human rights [must] be affected in a significant manner," to which the Commission must then support this situation.⁴

24. The Commission considered that the Court is called to decide on different aspects of State obligations in the context of internal armed conflicts, specifically in the context of

⁴ Cf. *Case of Pedro Miguel Vera Vera et al. V. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering clause nine, and *Case of El Mozote Massacre and neighboring areas*, *supra* nota 3, Considering clause 17.

military operations and using international humanitarian law as a source of interpretation for the relevant rules of the Convention. Thus, the expert witness would provide the necessary conceptual elements to inform the Court's decision stemming from a perspective on the complementarity of the two bodies of law in a case like this. Therefore, the Commission considered that the expert opinion would relevantly affect the Inter-American public order.

25. The State did not present any objection to this expert witness and the representatives also proposed it in their brief containing pleadings and motions, which was reiterated in the final list.

26. The President considers that the expert's report can be useful and relevant in regard to the relationship between international humanitarian law and international human rights law in order to establish general parameters on State obligations in the context of military operations in internal armed conflicts, which transcends the specific interests of the parties in a given proceeding and becomes a matter relevant to the Inter-American public interest. As such, the President considers it appropriate to admit the expert report of Alejandro Valencia Villa, proposed by the Inter-American Commission.

27. The representatives also suggested that the expert witness render a statement, "in light of international humanitarian law, on the attack against the civilian population, including the bombing, the killing of civilians, the wounded civilians, the looting, the forced displacement, the special protection of children, and other hostile acts against the population." They stated further that the expert witness "would answer questions on other matters related to the subject matter of this case and his area of expertise."

28. The State argued that, with regard to that part of the purpose of the expert opinion, it "would become a testimony to the extent that it would refer to factual elements where the existence of these and circumstances are the subject of litigation and therefore the expert report, in light of international humanitarian law [sic], would be mere speculation." In addition, the State indicated that the amplitude of the last aspect of the purpose that was proposed by the representatives, does not establish well in advance what the "other matters related" to the subject matter of the case and area of expertise would be, to which that aspect of the expert opinion violates the adversary principle in the absence of timely knowledge of the scope of the questions that the representatives could make. Therefore, the State objected "to this aspect of the expert opinion, considering it inadmissible in light of Article 2(23) of the Rules of Procedure of the Court."

29. The President notes that in effect the representatives actually suggest the aforementioned consideration as part of what would be the purpose of the proposed expert opinion, as well as that of other proposed expert opinions. It has been considered that "this manner of proposing testimony or expert opinions does not take into account the adversary principle, to which in many cases the subject matter of testimonies and expert opinions is specified based on the particular case. Therefore, in accordance with the most recent practice of this Court, after analyzing the purpose and evaluating what is relevant in this case, the Presidency will restrict the subject of the proposed statements and indicates, in the operative paragraphs of this Order, the manner in which it will be received and the specific points to which each expert opinion should be limited."⁵ As to the expert opinion of Mr. Valencia Villa, its purpose shall be established in the operative part of this decision, as proposed by the Inter-American Commission.

g) Manner in which the statements and expert opinions shall be received

30. It is necessary to ensure the most comprehensive presentation of facts and arguments by the parties in all that is relevant to the resolution of the issues being disputed, thereby

⁵ *Case of Cepeda Vargas v. Colombia*. Order of the President of the Court of December 22, 2009, Considering clause 16.

ensuring the parties the right to defend their respective positions as well as the ability to adequately address cases subject to the consideration of the Court, considering that the number of cases has grown considerably and is steadily increasing. It is also necessary to ensure a reasonable time in the duration of the process, as required by the effective access to justice. Due to the foregoing, it is requested that the largest possible number of testimony and expert reports be rendered before a notary public, and that the alleged victims, witnesses, and expert witnesses be heard at the public hearing whose direct statement is truly indispensable, taking into consideration the circumstances of the case and the purpose of the statements and opinions.

f.1) Statements and expert reports to be rendered before a notary public [affidavit]

31. Taking into account the provisions of Article 50(1) of the Rules of Procedure, that indicated by the representatives in their final list of declarants, the purpose of the statements offered, and the principle of judicial economy, the President deems it appropriate to receive, by way of statements before a notary public, the statements mentioned in operative paragraph one of this decision.

32. The President recalls that Article 50(5) of the Rules of Procedure of the Court establishes the possibility that the alleged victims or their representatives and the State provide a list of questions to be made to each of the persons summoned to render a statement before a notary public. Pursuant to the provisions of the mentioned regulation, an opportunity is granted for the representatives and the State to present, if they so desire, the questions they deem appropriate to the declarants and expert witnesses referred to in the mentioned operative paragraph. Upon rendering the statement before a notary public, the witnesses and expert witnesses must answer these questions, unless the President decides otherwise. The foregoing statements and expert opinions will be forwarded to the Commission, the State, and the representatives. In turn, the State and the representatives may submit any observations they deem pertinent within the period specified. The corresponding deadlines will be specified *infra*, in operative paragraph two, three, and four of this Order. The probative value of such statements and expert opinions will be determined at the opportune time by the Court, which will take into account all perspectives, if any, expressed by the State and representatives in exercise of their right to defense.

f.2) Statements and expert reports to be rendered at the hearing

33. The orders in this case are ready for the initiation of the oral proceedings on the merits, and possible reparations and costs, to which the President considers it appropriate to convene a public hearing to hear the statements of the alleged victims, witness and expert witness, proposed by the representatives, the Commission, and the State and referred to in operative paragraph five of this decision.

h) Final oral and written arguments and observations

34. The representatives and the State may present the Court with their final oral arguments on the merits and possible reparations and costs in this case, respectively, subsequent to the rendering of the statements and expert opinions. As established in Article 51(8) of the Rules of Procedure, upon concluding the presentation of the Inter-American Commission's arguments, they may present their final oral observations.

35. Pursuant to Article 56 of the Rules of Procedure, the alleged victims or their representatives, the State, and the Commission may present their final written arguments and final written observations, respectively, in relation to the merits and possible reparations and costs, in the period established in operative paragraph 13 of this Order.

i) Request to incorporate documents by the State and the representatives

36. In its brief containing pleadings and motions, the representatives asked the Court, based on Article 58(b) of the Rules of Procedure, to require several documents from the State as evidence to resolve the issues to be included in the case file of this case. The State and the Commission had no observations regarding this request.

37. The President considers it relevant to require the State to present: a) the official certificate of death and/or act of removal of the body of Mr. Rodolfo (or Rodulfo) Carrillo Mora; b) complete and accurate information in the hands of State agencies, including the municipal government of Tame, the National Statistics Department DANE (for its acronym in Spanish), the municipal public service companies, the Colombian Institute for Family Wellbeing ICBF (for its acronym in Spanish) health centers and public education establishments, on the population that resided in Santo Domingo on December 13, 1998; c) complete and accurate information from the records of the Social Solidarity Network, regarding the population registered as displaced from Santo Domingo (municipality of Tame) in relation to the facts of December 13, 1998; d) copy of the signed contracts between the Cravo Norte Association and the company Airscan International Inc., and certification of the contractual relationship between this company and Messers. Joe Orta, Charlie Denny, and Dan McClintock; e) complete, current, and accurate information on the deprivation of liberty measures against Cesar Romero Pradilla, Johan Jimenez Valencia, and Héctor Mario Hernández, including if at a point in time they were deprived of liberty, and if so, the places they were detained, the conditions of their detention, and the time they were effectively deprived of their liberty. The parties and the Commission may refer to this documentation in their final arguments, if they consider it necessary.

38. On the other hand, in its answer, the State requested that the Court:

"1. [...] officiate the Supreme Court of Justice of Colombia to issue a copy of every criminal proceeding carried out for the facts that occurred on December 13, 1998, in Santo Domingo, against the pilots.

2. [...] if it considers it necessary to procure the certified copies of the documents that the Colombian State presents as evidence and that are in the case file of the criminal proceeding carried out against the aircraft crew UH1H, to then officiate the Supreme Court of Justice of Colombia to send the certified copy of these procedural documents, just as the State of Colombia did on January 31, 2012," and

"3. [...] if it is considered necessary to have certified copies of the proceedings carried out before the Attorney General of the Nation and the State Council, to officiate these agencies to provide such procedural work."

39. The Commission and the representatives did not provide observations in this regard. The President considers that, at the opportune time, the Court will render a decision on the relevance of requiring the mentioned documentation from the State.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to Articles 24(1) and 25(2) of the Statute of the Court and Articles 4, 15(1), 26(1), 31(2), 45, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 60 of the Rules of Procedure of the Court,

DECIDES TO:

1. Require, for the reasons stated in this Order, pursuant to the principle of judicial

economy and in the exercise of the powers granted by Article 50(1) of the Rules of Procedure of the Court, that the following persons render their statements before a notary public [*affidavit*]:

A) *Alleged victims*

- 1) Mario Galvis Gelvez, who will render a statement on the events of December 12 and 13, 1998; on the personal, family, and patrimonial impacts thereof; the conditions in which he has lived as a consequence of the injuries he suffered; the investigations of the facts and the response of the authorities; the consequences had by the lack of justice, and the measures of reparation that in his opinion the State must adopt;
- 2) Maria Cenobia Panqueva, who will render a statement on the facts of December 12 and 13, 1998; on the impacts to her personal, family, and community life; the conditions in which she has lived as a consequence of the injuries she suffered; the investigations of the facts of the massacre and the response from the authorities; the consequence had by the lack of justice, and the measures of reparation that in her opinion the State must adopt;
- 3) Víctor Julio Palomino, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice, and the measures of reparation that in his opinion the State must adopt;
- 4) Jorge Henry Vanegas Ortiz, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;
- 5) Lucero Talero Sanchez, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 6) Ana Miriam Duran Mora, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 7) Giovanni Diaz Cobos, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;
- 8) Norelis Leal Pacheco, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;
- 9) Jose Rafael Hernandez Mujica, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;

- 10) Deycy Damaris Cedano, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 11) Nilsan Diaz Herrera, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;
- 12) Hugo Fernely Pastrana Vargas, who will render a statement on the events of December 13, 1998; on the personal and patrimonial impacts thereof; the harm to the property of the inhabitants of Santo Domingo; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt
- 13) Luis Felipe Duran Mora, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;
- 14) Gladys Arciniegas Calvo, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 15) Milciades Bonilla, who will render a statement on the events of December 12 and 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 16) *Margarita Tilano*, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt;
- 17) Rusmira Daza Rojas, who will render a statement on the events of December 13, 1998; on the personal impacts she suffered as a child, and the family and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in her opinion the State must adopt, and
- 18) Monica Alicia Bello Tilano, who will render a statement on the facts of December 12 and 13, 1998; on the impacts to her personal, family, and community life; the conditions in which she has lived as a consequence of the injuries she suffered; the investigations of the facts of the massacre and the response from the authorities; the consequence had by the lack of justice, and the measures of reparation that in her opinion the State must adopt;

B) *Witness*

- 19) Dom Rizzi, who will render a statement on the integration of the Opinion Tribunal, presided over by the former magistrate (now deceased) of the Supreme Court of the State of Illinois; the procedure used by that court, the testimonial and expert evidence presented before it; the reasons it rejected the various versions, promoted by officials and spokespersons for the Air Force, that sought to place blame on the

guerilla for the deaths and injuries; the reasons for the conclusion made by that court that a cluster bomb, thrown by a helicopter of the Air Force, caused the deaths and injuries; and the attempts made by that court to provide moral redress to the survivors and their family members.

C) *Expert witnesses*

- 20) Carlos López, attorney, who will render a statement on the legal responsibility of the companies in cases of "complicity" in cases of human rights violations and the respective State obligations under international law of human rights;
- 21) Ana C. Deutsch, clinical psychologist, will render a statement on the psycho-social harm to the victims and family members of the victims, which occurred as a consequence of the events in this case, and on the necessary reparations to remedy the damage;
- 22) Jose Quiroga, medical examiner of the International Rehabilitation Council for Torture Victims IRCT, who will render a statement on the medical evaluation of the injured persons, their clinical histories, the analysis of the acts of removals of the bodies, and the autopsies to determine the cause of death, as well as on the ballistic and shrapnel trajectory studies from the explosives, and
- 23) Elizabeth Salmón, attorney, who will render a statement on the possible violations that affected a significant number of alleged victims who were children at the time and were forced to move.

2. Require the State to provide, where deemed relevant and pursuant to considering paragraph 32 of this Order, in a non-extendable period until June 12, 2012, the questions it deems relevant by way of the Inter-American Court to the alleged victims, witnesses, and expert witnesses indicated in the operative paragraph. The statements and expert opinions must be presented to the Court no later than June 21, 2012.

3. Require the representatives to coordinate and carry out the necessary measures so that, once the questions have been received by the parties, the proposed declarants include the answers in their respective statements rendered before a notary public, pursuant to considering clause 32 of this Order.

4. Provide that, once the statements and expert opinions required in operative paragraph one have been received, the Secretariat of the Inter-American Court shall transmit them to the Commission and the State in order for the State, if considered necessary, to present its observations in its final written arguments.

5. Summon the representatives and the State, as well as the Inter-American Commission, to a public hearing, which will be held on June 27, 2012, as of 3:00pm, and will continue on the following day at 09:00am, during the 95th Regular Period Sessions, at the seat of the Court, to hear the final oral arguments and final oral observations, respectively, on the merits and possible reparations and costs, as well as the statements of the following persons:

A) *Alleged victims (proposed by the representatives)*

- 1) *Alba Yanet Garcia*, who will render a statement on the facts of December 12 and 13, 1998; on the impacts to her personal and family life; the conditions in which she has lived as a consequence of the injuries she suffered; the investigations of the facts and the response from the authorities; the consequence had by the lack of justice, and the measures of reparation that in her opinion the State must adopt, and

2) *Marcos Neite González*, who will render a statement on the events of December 13, 1998; on the personal, family, and patrimonial impacts thereof; the consequences had by the lack of justice and reparation, and the measures of reparation that in his opinion the State must adopt;

B) *Witness* (proposed by the State)

3) *Jairo Garcia Camargo*, who will render a statement on the causes of what happened in Santo Domingo, Arauca, on December 13, 1998.

C) *Witness* (proposed by the Commission and the representatives)

4) *Alejandro Valencia Villa*, who will render a statement on international standards that determine the State's obligations in the framework of the military operations taking place in a context of internal armed conflicts, including the obligations to the civilian population and international standards to be taken into account when investigating cases like this case. Established across the board, the expert witness will analyze the convergence and complementarity of international human rights law and international humanitarian law.

6. Require the State to facilitate the exit and entry of the declarants from its borders, if they reside in the country, for those summoned in this Order to render statements at the public hearing on the merits and possible reparations and costs in this case, pursuant to Article 26(1) of the Rules of Procedure of the Court.

7. Require the representatives, the State, and the Inter-American Commission to provide notice of this Order to those persons proposed by them and who have been summoned to render statements, pursuant to that established in Articles 50(2) and 50(4) of the Rules of Procedure.

8. Inform the representatives, the State, and the Inter-American Commission that they must cover the costs incurred by the production of the evidence provided by them, pursuant to that established in Article 60 of the Rules of Procedure.

9. Require the representatives, the State, and the Inter-American Commission to inform the persons summoned by the Court to render a statement that, pursuant to Article 54 of the Rules of Procedure, the Court will make known to the State the cases in which a person summoned to appear or render a statement failed to appear or refused to render a statement without legitimate cause, or when, in the opinion of the Court, has violated an oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.

11. Inform the representatives, the State, and the Inter-American Commission that, upon the rendering of the statements in the public hearing, they may present their final oral arguments and final oral observations, respectively, on the merits and possible reparations and costs in this case.

12. Order the Secretariat of the Court, pursuant to that provided in Article 55(3) of the Rules of Procedure and as soon as possible, provide a link to the recording of the public hearing on the merits and possible reparations and costs to the Inter-American Commission, the representatives, and the State.

13. Inform the representatives, the State, and the Inter-American Commission that they have a period until July 27, 2012, to present the final written arguments and final written observations, respectively, in relation to the preliminary objections, merits and possible reparations and costs in this case. This period is non-extendable and independent of the provision of the recording of the public hearing to the parties.

14. Require the State to present, by no later than June 19, 2012, copies of the documentation indicated in considering paragraph 37 of this Order. The parties and the

Commission can refer to this documentation in their final written arguments, if they consider it relevant.

15. Order the Secretariat of the Court to provide legal notice of this Order to the representatives of the alleged victims, the State, and the Inter-American Commission.

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary