

Santo Domingo Massacre v. Colombia

ABSTRACT¹

This case is about a military operation carried out against guerrillas in the Arauca department. During the operation, a military helicopter dropped a cluster bomb in the center of the village of Santo Domingo, killing and injuring civilians and destroying homes and property. Although the State did prosecute the crew of the helicopter and compensated the victims, the Court still found violation of several articles of the American Convention.

I. FACTS

A. Chronology of Events

December 12, 1998: Santo Domingo is a rural village home to 247 people in approximately forty-seven houses in the Arauca province of Colombia.² A Cessna light plane lands on a highway that leads from the village of Santo Domingo.³ Authorities suspect the plane is carrying money and weapons for drug-trafficking purposes.⁴ Troops from the 36th Counter-Guerrilla Battalion, an army ground unit, and members of the Air Force attempt to immobilize the plane.⁵ However, a group of bandits confront and interrupt the Battalions.⁶

In response, the 36th Counter-Guerrilla Battalion group and the State Army's 18th Brigade begin military operations, known as Relámpago and Pantera, that last several days.⁷ The commander of the 36th Counter-Guerrilla Battalion group authorizes the Pantera mission as a military security operation to control an area near Santo Domingo with the purpose of capturing subversive groups committing crimes in that

1. Nathaniel Reinhardt, Author; Jennifer Toghian, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 54 (Nov. 30, 2012).

3. *Id.* ¶ 61.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

area.⁸ Additionally, the commander issues Pantera II, an operation outlining an airborne mission to occupy and search the sector of Santo Domingo beginning at 6:00 a.m. on December 13, 1998 with the purpose of carrying out counter-guerrilla offensives.⁹

Additionally, the State Air Force begins to plan an airborne military operation,¹⁰ which utilizes an aircraft loaded with a cluster bomb.¹¹ The cluster bomb is made up of six bombs or grenades each weighing twenty pounds,¹² and its purpose is to attack persons or light cars.¹³ When an aircraft drops a cluster bomb, the cluster bomb explodes and breaks up into fragments that scatter.¹⁴

December 13, 1998: After a night of intense gunfire followed by a lull, gunfire resumes at 5:30 a.m. between State governmental forces and guerrillas.¹⁵ As a safety measure, inhabitants of the village keep their lights on to identify themselves as civilians.¹⁶

At 9:00 a.m., several aircraft fly over the area including a helicopter with cluster bombs piloted by Lieutenant C.R.P.¹⁷

At 10:02 a.m., the crew of the helicopter, launch a cluster bomb in an urban area of the village of Santo Domingo.¹⁸ As a result, seventeen individuals die, six of whom are children.¹⁹ Additionally, the blast injures twenty-seven individuals, including ten children.²⁰

The National Director of Special Investigations of the Attorney General's Office ("AGO") opens an ex officio, a preliminary disciplinary investigation.²¹

December 14, 1999: A commission composed of the Ombudsman's office and the Ministry of the Interior conduct inspections into the Santo

8. *Id.* ¶ 64.

9. *Id.* ¶ 65.

10. *Id.* ¶¶ 61, 62.

11. *Id.* ¶ 62.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* ¶ 66.

16. *Id.* ¶ 67.

17. *Id.* ¶ 68.

18. *Id.* ¶¶ 69, 72. The government argued that the Air Force launched a light bomb, not on the village, but in a wooded area 500 meters outside of the village of Santo Domingo. *Id.* ¶ 73. The government explained that the victims were, instead, harmed by an explosive device installed on the back of a truck by guerrillas of FARC. *Id.* The truck subsequently exploded on the main street of the village. *Id.*

19. *Id.* ¶ 70.

20. *Id.*

21. *Id.* ¶ 120.

Domingo events.²² The inspections confirm the damaged homes and pilaged property.²³

Under civil jurisdiction, the 41st Delegate Prosecutor to the Judges of the Tame Circuit orders a preliminary investigation.²⁴

December 15, 1998: The government secretary of the municipality of Tame calls attention to the influx of displaced people, indicating that at least 200 people abandoned their villages near Santo Domingo and arrived in Tame, seeking the government's protection.²⁵ The Governor of Arauca expresses the same concern, estimating 300 displaced people.²⁶

Under military criminal jurisdiction, the Commander-in-Chief of the Military Forces requests an investigation, prompting the Court of First Instance of Apiay to take up the case.²⁷

December 28, 1998: An inspection takes place in compliance with the decision of the Commission of Delegate Prosecutors.²⁸ It confirms damage and loss to the homes in Santo Domingo.²⁹

Additionally, under military criminal jurisdiction, the 118th Military Criminal Investigation Court decides to abstain from criminal proceedings against the 36th Counter-Guerrilla Battalion for the Santo Domingo Massacre.³⁰

January 1999: Several villagers begin to return to Santo Domingo.³¹

March 29, 1999: The Criminal Division of the Administrative Department of Security conducts an expert appraisal of six post-explosion samples from the Santo Domingo site.³²

May 20, 1999: The 118th Military Criminal Investigation Court ("MCI") decides to not open an inquiry against members of the Air Force in regards to the Santo Domingo Massacre.³³

22. *Id.* ¶¶ 79, 80.

23. *Id.* ¶ 79.

24. *Id.* ¶ 80.

25. *Id.* ¶ 76.

26. *Id.*

27. *Id.* ¶ 80.

28. *Id.*

29. *Id.* ¶ 79.

30. *Id.* ¶¶ 82, 83.

31. *Id.* ¶ 78.

32. *Id.* ¶ 84.

33. *Id.* ¶ 85. It is important to note that a State Air Force Captain presided over the Military Preliminary Criminal Investigation Court. *Id.*

December 31, 1999: The Department of Arauca and the Araucano Development Institute both sign a cooperation agreement to relocate, reconstruct and improve the forty-seven homes in Santo Domingo.³⁴

February 11, 2000: A judicial inspection of the village of Santo Domingo takes place.³⁵

March 15, 2000: A judicial inspection of the Ordinance Warehouse takes place.³⁶ The inspection measures each piece of the cluster bomb and compares them to “post-explosion” pieces recovered during the previous judicial inspection in Santo Domingo.³⁷

May 30, 2000: The Human Rights Unit of the Prosecutor General’s Office decides to revoke the decision of the MCI and orders the court to open an investigation.³⁸ Additionally, the office splits the Santo Domingo case into two judicial proceedings, with one concerning the murder of eight members of the Armed Forces by guerilla FARC members, and the other dealing with the Army’s attack on the citizens of Santo Domingo.³⁹

June 13, 2000: The AGO opens an investigation against the crew of the helicopter, Lieutenant C.R.P., Lieutenant J.J.V., and Flight Technician H.M.H.A, as well as the Commander of the 36th Counter-Guerrilla Battalion, Army Major J.M.G.G.⁴⁰

September 21, 2000: The Superior Court of Bogota nullifies the previous May 30, 2000 decision and bars an investigation against the UH1H helicopter crew, due in part to an alleged violation of now Captain C.R.P.’s right to due process.⁴¹

September 25, 2000: Mr. Alejandro Álvarez Pabón files a civil suit on behalf of the families of the sixteen individuals killed and the thirteen injured.⁴² The suit includes allegations of destruction and looting of var-

34. *Id.* ¶ 78.

35. *Id.* ¶ 86.

36. *Id.* ¶ 87.

37. *Id.*

38. *Id.* ¶ 90.

39. *Id.* ¶ 148 n.212.

40. *Id.* ¶ 121.

41. *Id.* ¶ 92.

42. *Id.* ¶ 124.

ious properties, both real and personal, of additional affected persons.⁴³

October 27, 2000: The AGO charges Captain C.R.P., Lieutenant J.J.V., and Flight Technician H.M.H.A.⁴⁴ Specifically, the AGO charges Captain C.R.P. with launching an explosive device while being aware of the bomb's dangerousness, constituting a gross violation of international law and a wanton disregard for human life.⁴⁵ Additionally, the AGO charges Flight Technician H.M.H.A. with firing a cluster bomb, on Captain C.R.P.'s order, at the Santo Domingo village and its inhabitants.⁴⁶

November 21, 2000: The Commander-in-Chief sets up a special Military Preliminary Criminal Investigation Unit (*Unidad de Instrucción Penal Militar Especial*, "UIPME") to investigate the facts of the Santo Domingo massacre.⁴⁷

February 9, 2001: The UIPME revokes the May 30, 2000, decision and orders formal proceedings against the helicopter crew for the crimes of homicide, bodily harm, and property damage.⁴⁸

October 2, 2002: The Special Disciplinary Commission, created by the AGO, delivers judgment against Captain C.R.P. and Flight Technician H.M.H.A., and suspends the two men from duty for three months.⁴⁹ The men appeal the decision and the Commission acquits Major J.M.G.G. and Lieutenant J.J.V.⁵⁰

December 19, 2002: The Disciplinary Chamber of the AGO's office upholds the military suspension of Captain C.R.P. and Flight Technician H.M.H.A., originally issued on October 2, 2002 by the Special Disciplinary Commission.⁵¹

February 17, 2003: MPI forwards the case to the Human Rights Unit for the Prosecutor General's Office.⁵²

43. *Id.*

44. *Id.* ¶ 122.

45. *Id.*

46. *Id.*

47. *Id.* ¶¶ 93, 95.

48. *Id.*

49. *Id.* ¶ 123.

50. *Id.*

51. *Id.*

52. *Id.* ¶ 103.

August 12, 2003: The Prosecutor's office conducts a field test at Apiay Air Base using devices similar to the cluster bomb used in the confrontation at Santo Domingo.⁵³ The test concludes that the fragments of the bombs gather at 100 meters around each of the six craters, instead of the thirty meters cited by the cluster bomb's technical manual.⁵⁴

December 19, 2003: The human rights unit of the Prosecutor's Office indicts the crew of the helicopter for culpable homicide and bodily harm.⁵⁵ However, the investigation will continue to assess other culpable parties responsible, including possibly perjury charges against citizen R.V.G.⁵⁶

May 20, 2004: The Contentious Administrative Court of Arauca, in a civil proceeding, finds in favor of the twenty-three family groups and orders the State to pay compensation.⁵⁷

October 19, 2004: The Single Court of the Saravena Circuit (criminal proceeding) begins the case against the helicopter crew and sets a preparatory hearing for December 16, 2004.⁵⁸

February 17, 2005: The defense counsel requests venue change to Bogotá because of the potential for an unfair trial, which is granted by the Criminal Cassation Chamber of the Supreme Court.⁵⁹

November 24, 2006: Representatives of the state and the victims reach a preliminary agreement regarding compensation for the massacre.⁶⁰

September 21, 2007: The 12th Criminal Court of the Bogotá Circuit finds the three members of the helicopter crew guilty of seventeen counts of manslaughter and eighteen counts of negligent bodily harm.⁶¹ The Court sentences each man to seventy-two months' imprisonment and imposes a fine of 270,000 Colombian pesos (approximately \$130 USD) on each.⁶²

53. *Id.* ¶ 104.

54. *Id.* ¶ 63.

55. *Id.* ¶ 105.

56. *Id.*

57. *Id.* ¶ 125.

58. *Id.* ¶ 106.

59. *Id.* ¶¶ 106-108.

60. *Id.* ¶ 125.

61. *Id.* ¶ 109.

62. *Id.*

December 13, 2007: Section Three of the Council of the State (“Council”) approves the compensation agreement between representatives of the victims and the state for nineteen of the twenty-three family groups in the civil proceeding.⁶³ The Council orders civil proceedings to continue for the other four family groups.⁶⁴

November 29, 2008: The Council declares the Ministry of Defense liable for the damage caused by the Santo Domingo Massacre to the four remaining family groups that did not previously settle.⁶⁵

January 30, 2009: The Superior Court of Bogotá, in a criminal proceeding, annuls the September 21, 2007 decision because the trial introduced evidence that failed to prompt an additional, required charge for the wanton disregard for human life.⁶⁶

March 18, 2009: The State passes Resolution 979 to compensate the victims of the Santo Domingo Massacre.⁶⁷

April 27, 2009: The State passes Resolution 1560 to provide further compensation to the victims of the Santo Domingo Massacre.⁶⁸ The Resolutions Nos. 1560 and 979 pay the twenty-three family groups a total of 5,785,759,019.20 Colombian pesos (approximately \$2.8 million USD).⁶⁹ One-hundred and eleven persons make up the family groups.⁷⁰

September 24, 2009: The 12th Criminal Court finds the airmen guilty of seventeen acts of manslaughter and eighteen counts of bodily harm with wanton disregard for human life.⁷¹ The Court sentences Captain C.R.P. and Lieutenant J.J.V. to 380 months’ imprisonment each, including a fine of 44,000 Colombian Pesos (approximately \$22.98 USD).⁷² The Court sentences technician Flight Technician H.M.H.A. to seventy-two months imprisonment and a fine of 181,000 Colombian pesos (approx-

63. *Id.* ¶ 125.

64. *Id.*

65. *Id.*

66. *Id.* ¶ 110.

67. *Id.* ¶ 126.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* ¶ 111.

72. *Id.*

imately \$94.54 USD).⁷³

August 31, 2011: The prosecutor of the Human Rights Unit opens a formal investigation against then Colonel S.A.G.V. and Lieutenant G.D.L.S., two active Air Force officials, to decide their criminal responsibility as co-authors of the seventeen acts of manslaughter and eighteen counts of bodily harm.⁷⁴

June 15, 2011: On appeal, the Superior Court of Bogotá Judicial District acquits Flight Technician H.M.H.A. and amends the sentencing of Captain C.R.P. and Lieutenant J.J.V. to 360 months.⁷⁵

September 8, 2011: Defense counsel for Captain C.R.P and Lieutenant J.J.V. files an application challenging the legality of a 360-month imprisonment sentence.⁷⁶ The Criminal Judge in the Saravena Circuit rules that the defense counsel's claim is not substantiated.⁷⁷

October 11, 2011: The National Human Rights and International Humanitarian Law Unit reassigns the case against then Colonel S.A.G.V., Lieutenant G.D.L.S., and Officer C.A.G.M., from the 29th Prosecutor's Office to the 22nd Prosecutor's Office.⁷⁸

November 2, 2011: The 22nd Prosecutor's Office decides to reopen and continue a previously closed investigation, against Captain C.R.P., Lieutenant J.J.V., and Flight Technician H.M.H.A., so that the court may rule on the admissibility of evidence requested by the defense counsel for then Colonel S.A.G.V., Lieutenant G.D.L.S., and Officer C.A.G.M.⁷⁹

November 18, 2011: The 22nd Prosecutor's Office releases Officer C.A.G.M. and Lieutenant G.D.L.S. as the time frame holding the two officers expires.⁸⁰

January 3, 2012: The National Human Rights and International Humanitarian Law Unit orders some evidence requested by the defense

73. *Id.*

74. *Id.* ¶ 112.

75. *Id.* ¶ 113.

76. *Id.* ¶ 114.

77. *Id.*

78. *Id.* ¶ 115.

79. *Id.* ¶ 116.

80. *Id.* ¶ 117.

counsel, refuses other evidence, and opens a preliminary disciplinary investigation.⁸¹

B. Other Relevant Facts

In the 1970's, guerrillas from the National Liberation Army (*Ejército Liberación Nacional*, "ELN") settle in the Arauca department of Colombia.⁸² The Arauca department consists of seven municipalities, one of which is Tame.⁸³

Three geographic locations in the Tame municipality make the region strategically important.⁸⁴ First, an important juncture between the Liberators Route and the main road across the plains meet in Tame.⁸⁵ Second, the municipality guides land passage to Puerto Rondón, Cravo Norte, and Fortul.⁸⁶ Finally, the rural village of Santo Domingo resides in the Tame municipality⁸⁷ near a highway that leads to the Arauca municipality.⁸⁸ The geographic features make the area a prominent transit for illegal and legal trade bound for Venezuela.⁸⁹

In the 1980's, guerrillas from the Colombian Revolutionary Armed Forces (*Fuerzas Armadas Revolucionarias de Colombia*, "FARC") arrive and settle in Arauca.⁹⁰

In July of 1980, Ecopetrol, a Colombian company, and Occidental Petroleum Corporation ("OXY"), a multinational company, sign the Cravo Norte agreement.⁹¹ The contract purposes the Aracua department for the "exploration and exploitation of hydrocarbons."⁹² In 1983, OXY discovers the Caño Limón oilfield.⁹³ OXY operates the oilfield and transports resources through the Caño Limón-Coveñas pipeline, operated by Ecopetrol.⁹⁴ During this time, a state of generalized violence exists in the department of Arauca.⁹⁵ On September 12, 1996, Ecopetrol and OXY sign an agreement to provide financial assistance to support

81. *Id.* ¶ 118.

82. *Id.* ¶ 58.

83. *Id.* ¶ 53.

84. *Id.* ¶ 56.

85. *Id.* ¶ 53.

86. *Id.*

87. *Id.* ¶ 53.

88. *Id.* ¶¶ 56-57.

89. *Id.*

90. *Id.* ¶ 58.

91. *Id.* ¶ 59.

92. *Id.*

93. *Id.* ¶ 55.

94. *Id.*

95. *Id.* ¶¶ 56-57.

the units of the 18th Brigade of the State Army.⁹⁶

II. PROCEDURAL HISTORY

A. Before the Commission

April 18, 2002: Several organizations file an initial petition before the Inter-American Commission on Human Rights.⁹⁷

March 6, 2003: The Commissions adopts Report No. 25/03 and declares the case admissible.⁹⁸

March 24, 2011: The Commission approves Merits Report No. 61/11.⁹⁹ The Commission finds that the State is responsible for various violations and makes six recommendations.¹⁰⁰ First, the Commission recommends the State to conduct an independent investigation within a reasonable amount of time of the Santo Domingo Massacre.¹⁰¹ Second, the investigation should explore any possible link between the oil companies and State agents.¹⁰² Next, the State should work with the community to administer an appropriate remedy that recognizes the Santo Domingo Massacre's impact and includes developing initiatives tied to health, housing, and education.¹⁰³ Subsequently, the State should adopt preventative measures, including human rights educational programs for the military. Further, the State should provide remedies that consider moral respects, including disseminating the truth of the events, remembering the victims, and providing psychological assistance to the victim's families.¹⁰⁴ Finally, the State should provide assistance to children affected by the event.¹⁰⁵

96. *Id.* ¶ 59.

97. *Id.* ¶ 2. The organizations include the following: 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. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* ¶ 2 n.3.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

B. Before the Court

July 8, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹⁰⁶

March 9, 2012: The State raises two preliminary objections regarding the Court's jurisdictional inadequacy pertaining to "laws of war" and the failure of the victims to exhaust domestic remedies.¹⁰⁷

June 27-28, 2012: The Court holds a public hearing.¹⁰⁸

1. Violations Alleged by Commission¹⁰⁹

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

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

Article 19 (Rights of the Child)

Article 21(1) (Right to Use and Enjoyment of Property)

Article 21(2) (Right to Compensation in Case of Expropriation)

Article 22(1) (Right to Move Freely Within a State)

Article 25 (Right to Judicial Protection)

all in relation to:

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

2. Violations Alleged by Representatives of the Victims¹¹⁰

Same Violations Alleged by Commission, plus:

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 11(1) (Right to Honor and Dignity) of the American Convention.

June 27, 2012: The *Coalición contra la vinculación de niñas y jóvenes*

106. *Id.* ¶ 1.

107. *Id.* ¶¶ 16, 27.

108. *Id.* ¶ 13.

109. *Id.* ¶¶ 4(a)-(h).

110. *Id.* ¶ 5. 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 Douglas Cassel, David Stahl, and Lisa Meyer serve as representatives of the victims. *Id.* ¶ 8 n.5.

al conflicto armado en Colombia submits an *amicus curiae* brief to the Court.¹¹¹

III.MERITS

A. *Composition of the Court*

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 30, 2012: The Court issues its Judgment on Preliminary Objections, Merits and Reparations.¹¹²

The Court unanimously rejects the State's preliminary objections,¹¹³ because:

Regarding the first preliminary objection, the State argues that the violence between the State Army and the FARC guerrilla units falls within the context of "laws of war" and is not a consequence of violations stemming from humanitarian rights protected by the American Convention.¹¹⁴ Additionally, the State requests that the Court not attribute the acts of private individuals in the Armed Forces to the State and that the Court bars a Commission-requested investigation into potential human rights violations committed by senior commanders.¹¹⁵ The Court finds jurisdictional competence to decide violations in times of peace or armed conflict, citing to previous rulings on cases involving armed con-

111. *Id.* ¶ 14.

112. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations.

113. *Id.* ¶¶ 26, 39.

114. *Id.* ¶ 16.

115. *Id.* ¶ 17.

*flicts and the fact that the American Convention does not exclude armed conflict issues.*¹¹⁶ Further, the Court states that it may analyze other relevant international humanitarian treaties when making a determination as to whether the State violated humanitarian rights under the American Convention.¹¹⁷

*Regarding the second preliminary objection, the State argues that the victims did not pursue local remedies in accordance with American Convention, specifically citing the victims' failure to bring the case to the appropriate "contentious-administrative" State courts.*¹¹⁸ The Court notes that "contentious-administrative" proceedings are relevant in determining State responsibility and victim reparation.¹¹⁹ However, the Court does not believe that the "contentious-administrative" domestic courts are remedies that the victims must exhaust.¹²⁰ Accordingly, the Court rejects the State's second preliminary objection.¹²¹

The Court found unanimously that Colombia had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), Article 5(1) (Right to Physical, Mental, and Moral Integrity), and Article 19 (Rights of the Child) in relation to Article 1(1) of the Convention, to the detriment of the individuals who died in Santo Domingo on December 13, 1998,¹²² because:

*Based on the evidence, the Court concluded that the State launched the cluster bomb on the village of Santo Domingo via the crew of the helicopter and fired on the civilians fleeing the area.*¹²³ Additionally, the bombing of Santo Domingo resulted in six children's deaths, ten children's injuries, and a multitude of post-traumatic stress incurred on the next of kin in violation of the State's obligations.¹²⁴

*The Court began by citing the relevant principles governing the three articles.*¹²⁵ The Court alluded to the necessity of analyzing the three vio-

116. *Id.*

117. *Id.* ¶¶ 23-24.

118. *Id.* ¶ 27.

119. *Id.* ¶ 38.

120. *Id.*

121. *Id.* ¶ 39.

122. *Id.* ¶¶ 174-247.

123. *Id.* ¶ 210.

124. *Id.* ¶¶ 240, 242.

125. *Id.* ¶¶ 187-194.

lations together, because of the complex circumstances of the case and the interrelated rights involved.¹²⁶ The State must respect the rights to life by ensuring appropriate governmental measures to guarantee those rights.¹²⁷ The right to life is an essential right because all other rights rely on it.¹²⁸ The right to physical, mental, and moral integrity is a matter of degrees, with different consequences according to the uniqueness of the situation.¹²⁹ Finally, cases that affect the rights of children are especially serious because family, society, and the State possess special obligations towards children.¹³⁰

First, the Court ruled on the circumstances surrounding the launch of the cluster bomb.¹³¹ Second, the court analyzed the facts surrounding the alleged machine gun attack.¹³² Next, the Judiciary examined measures of any State protection in favor of the affected children.¹³³ Then, the Court determined any potential violations of a right to integrity for the next of kin.¹³⁴ Finally, the Judges surveyed the claim regarding the State's obligations to adopt domestic provisions and any violations thereof.¹³⁵

I. Regarding the Launch of the Cluster Bomb

The Court noted two versions presented by each of the respective parties.¹³⁶ The first version, presented by the Commission and the representatives, blamed the State Air Force for launching a cluster bomb on Santo Domingo.¹³⁷ The second version, presented by the State, attributed launching the cluster bomb 500 meters north of the village and blamed, instead, the injuries and deaths on the explosion of a red truck connected with FARC members.¹³⁸

The Court highlighted eyewitness testimony, corroborated by several investigative measures, that directly observed one of the State Air Force

126. *Id.* ¶ 187.

127. *Id.* ¶¶ 188-189.

128. *Id.* ¶ 190.

129. *Id.* ¶ 191.

130. *Id.* ¶ 192.

131. *Id.* ¶ 194.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* ¶ 195.

137. *Id.*

138. *Id.*

helicopters drop the cluster bomb in the middle of the village, around 10:00 a.m.¹³⁹ Additionally, the Court analyzed film recorded by the “Skymaster” aircraft which stated the desired location of the cluster bomb in a “wooded area.”¹⁴⁰ The video briefly showed smoke emanating from the village, consistent with subsequent investigative reports and eyewitness testimony.¹⁴¹ Additionally, the Court verified that State authorities found shrapnel fragments from the cluster bomb in the village and in bodies of the injured and deceased.¹⁴²

The Court found no reason to stray from the domestic factual findings in the previous criminal jurisdictions.¹⁴³ The Prosecutor’s General’s Office identified six points of impact corresponding to the six bombs that make-up the cluster bomb.¹⁴⁴ The 12th Criminal Court and the Superior Court of the Bogotá Judicial District later affirmed the Prosecutor’s investigations.¹⁴⁵

Regarding the State’s version, the Court dismantled the State’s evidence that showed, approximately six minutes after the explosion, images of the Skymaster video displaying no signs of victims, bodies, craters or blood.¹⁴⁶ The Court noted the following: (1) the impossibility of observing most of the victims in the image because there were only seven people not located underneath the roof of a building, (2) the indication that some of the injured remained in their homes after the explosion, (3) the obscure view of several of the victims adjacent to trees and vegetation, (4) the injured victims removed themselves to houses shortly after the explosion, and (5) the Skymaster was too unclear to observe the craters in detail.¹⁴⁷ Moreover, testimony from members of the State Air Force were inconsistent with one another, as to where the cluster bomb fell.¹⁴⁸

Regarding the State’s exploding red truck theory, the Court observed the red truck, a few minutes before 10:00 a.m., intact on the Skymaster image.¹⁴⁹ The Skymaster image shows the truck damaged ten minutes

139. *Id.* ¶ 196.

140. *Id.* ¶¶ 197-198.

141. *Id.* ¶¶ 198-199.

142. *Id.* ¶ 200.

143. *Id.* ¶ 203.

144. *Id.* ¶ 202.

145. *Id.* ¶ 203.

146. *Id.* ¶ 204.

147. *Id.* ¶ 205.

148. *Id.* ¶ 206.

149. *Id.* ¶ 207.

later.¹⁵⁰ The Court deduced the high improbability of the State's version of events, in which the truck had to explode at almost the same moment the cluster bomb detonated.¹⁵¹ Similarly, the State's version did not correspond to all of the testimony presented by the victims.¹⁵² Therefore, the Court concluded that a cluster bomb fell on the main street of Santo Domingo.¹⁵³

With the cause of the incident resolved, the Court determined the State's responsibility by analyzing three applicable principles: (1) the distinction between civilians and combatants; (2) proportionality; and (3) precaution in attack.¹⁵⁴ First, the State must distinguish between combatants and civilians at all times, directing attacks only towards combatants.¹⁵⁵ The Court concluded that the State failed to comply with this distinction.¹⁵⁶

Second, the principle of proportionality refers to the State's obligation to prohibit launching attacks that excessively endanger civilian life in relation to the direct military advantages offered by the attacks.¹⁵⁷ The Court refused to apply this principle because the cluster bomb detonated in an area the military did not intend.¹⁵⁸

Finally, the principle of precaution refers to the State's duty to implore constant care to minimize injury and loss of civilian life.¹⁵⁹ The Court noted that the cluster bomb is not a precise weapon, with six bombs that separate across impact points ranging dozens of meters apart.¹⁶⁰ The Court pointed out that the Commander of the Apiay Base testified that each cluster bomb can have a "theoretical range of 150 meters depending on dispersion."¹⁶¹ Additionally, the Court cited to the ruling of the 12th Criminal Court, which stated that the aircraft technician that executed the launch did not see the village before doing so.¹⁶² Moreover, the Court referred to military bombardment regulations and norms gov-

150. *Id.* ¶ 208.

151. *Id.*

152. *Id.* ¶ 209.

153. *Id.* ¶ 210.

154. *Id.* ¶ 211.

155. *Id.* ¶ 212.

156. *Id.* ¶ 213.

157. *Id.* ¶ 214.

158. *Id.* ¶ 215.

159. *Id.* ¶ 216.

160. *Id.* ¶ 217.

161. *Id.* ¶ 219.

162. *Id.* ¶ 218.

erning aerial support, which prohibited military bombs dropped near civilian populations.¹⁶³ The Court concluded that the launch instruction was imprecise as to the drop location.¹⁶⁴

Additionally, the Court mentioned other relevant circumstances attributing to the pilot error.¹⁶⁵ Approximately fourteen minutes prior to the launch of the cluster bomb, aerial support launched a missile in the wrong location, which stressed the increased momentum of the aerial operation.¹⁶⁶ The Court inferred the intensity of the combat from the nervous radio chatter between the pilots, and suggested the need to establish more order, prior to the launch of the cluster bomb.¹⁶⁷ Finally, the Court alluded to failed communications between ground forces and aerial support, via testimony by Captain S.A.C.E., and was able to infer that the aircraft did not take the necessary care to consult ground troops before launching the cluster bomb.¹⁶⁸

In conclusion, the Court found that the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity) based on the following: (1) the imprecise nature of the cluster bomb; (2) the vague instructions given for the drop location; (3) the norms and military manuals for aerial support which prohibit the use of bombs near civilian populations; (4) the previous missile errors shortly before the launch of the cluster bomb; (5) the doubts to even implement the cluster bomb in this type of mission; and (6) the suggested need to introduce more order during the aerial mission.¹⁶⁹

II. Regarding the Machine Gun Attack

The Court concluded that Armed Forces fired on civilians fleeing the village with machine guns, in violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity).¹⁷⁰ The Court noted that the principle of distinction prohibits aerial pilots from indiscriminately using weapons on both civilians and combatants, without employing conduct to limit civil-

163. *Id.* ¶ 220.

164. *Id.* ¶ 223.

165. *Id.* ¶¶ 224-226.

166. *Id.* ¶ 224.

167. *Id.* ¶ 225.

168. *Id.* ¶ 226.

169. *Id.* ¶¶ 227, 230.

170. *Id.* ¶¶ 231-237.

ian deaths.¹⁷¹ Additionally, testimony from aircraft pilots expressing doubts as to whether the people fleeing on the highway were civilians or FARC members, demonstrated a lack of concern for life and integrity, as the pilots fired on the people anyway.¹⁷² The Court noted that the pilots' indiscriminate firing violated the principle of distinction and, consequently, the rights to life and personal integrity.¹⁷³

III. Regarding the Lack of Measures of Protection in Favor of Children

The Court concluded that the State failed to provide special protection to the children affected by the events of Santo Domingo, violating Article 19 (Rights of the Child).¹⁷⁴ The Court recognized that the State's obligations include providing care to children and ensuring familial reunions after displacement, especially in light of a child's vulnerabilities in armed conflict.¹⁷⁵ Here, the Court proved that the Santo Domingo massacre killed six children and injured ten, resulting in a violation of the right to life and personal integrity understood in light of Article 19 (Rights of the Child).¹⁷⁶

IV. Regarding the Right of Integrity of the Next of Kin

The Court found the State responsible for violation of Article 5 (Right to Physical, Mental, and Moral Integrity) to the detriment of the next of kin.¹⁷⁷ The Court presumed a violation of the right of integrity of the next of kin as long as the specific circumstances relate to the case.¹⁷⁸ Here, the Court found the State in violation because the next of kin experienced chronic post-traumatic stress symptoms directly due to the event and the effects the massacre had on their loved ones.¹⁷⁹

V. Regarding the Obligation to Adopt Domestic Provisions

The Court concluded that it was not appropriate to analyze the facts in relation to Article 2 (Obligation to Give Domestic Legal Effect to

171. *Id.* ¶ 234.

172. *Id.* ¶ 235.

173. *Id.* ¶¶ 235-237.

174. *Id.* ¶ 241.

175. *Id.* ¶¶ 238-239.

176. *Id.* ¶ 241.

177. *Id.* ¶ 244.

178. *Id.* ¶ 242.

179. *Id.* ¶¶ 242-243.

Rights) because the representatives did not provide sufficient evidence linking the conduct of the multinational companies, operating in the Santo Domingo area, with the facts of the case.¹⁸⁰ Additionally, the Court found that the representatives failed to specifically allege how the activities of the multinational companies could have prevented the events in Santo Domingo.¹⁸¹

Article 22 (Right to Move Freely Within a State) in relation to Article 1(1) of the Convention, to the detriment of the individuals affected by the bombing in Santo Domingo on December 13, 1998,¹⁸² because:

*Based on the evidence, the village of Santo Domingo was evacuated due to the explosion of the cluster bomb, dropped by Armed Forces of the State.*¹⁸³

*The Court recognized the right established in Article 22 (Right to Move Freely Within a State) protects the right of an individual not to be forcibly displaced within the State.*¹⁸⁴ *The Skymaster video revealed inhabitants leaving after the launch of the cluster bomb and testimony of one of the pilots who was at the scene, both corroborated the whole village fleeing.*¹⁸⁵ *Additionally, testimony from the fleeing inhabitants recounted taking refuge in a shelter for about twenty days and described the desertion of Santo Domingo as an act out of fear.*¹⁸⁶ *Testimony from Colonel S.A.G.V. affirmed the displacement stating that he saw more than one hundred civilians walking rapidly towards Tame and trucks hurriedly picking up civilians as if they were afraid.*¹⁸⁷ *Finally, the Mayor of Tame and a commission from the Ministry of the Interior visited the village on December 16, 1998, and confirmed the desertion.*¹⁸⁸

*The Court appreciated the State's efforts to provide help and support for the displaced villagers of Santo Domingo.*¹⁸⁹ *The Court noted that the State adopted measures to reconstruct Santo Domingo and ordered an Army occupation of the village, in order to quell fears of future at-*

180. *Id.* ¶¶ 245-246.

181. *Id.* ¶ 246.

182. *Id.* ¶¶ 174-247.

183. *Id.* ¶¶ 255-268.

184. *Id.* ¶ 255.

185. *Id.* ¶ 258.

186. *Id.* ¶ 259.

187. *Id.* ¶ 260 n.380.

188. *Id.* ¶ 261.

189. *Id.* ¶ 264.

tacks.¹⁹⁰ The Court also noted that it was impossible to know the number of displaced people affected by the events because the representatives failed to identify all the individuals that were displaced.¹⁹¹ Regardless of the State's efforts to mend Santo Domingo, the Court found that the State had violated Article 22 (Right to Move Freely Within a State) of the Convention, particularly concerning the individuals that were identified by the representatives and displaced by the event in Santo Domingo.¹⁹²

Article 21(1) (Right to Use and Enjoyment of Property) and Article 21(2) (Right to Compensation in Case of Expropriation) in relation to Article 1(1) of the Convention, to the detriment of Mr. Mario Galvis, Mr. Victor Palomino, Ms. Margarita Tilano, and Mr. Olimpo Cárdenas,¹⁹³ because:

*The Court found that the cluster bomb directly damaged four buildings in the village, a clear violation of the right to use and enjoy property.*¹⁹⁴

*Additionally, the Court defined the rights to property as the use and enjoyment of material goods that a person can obtain, including a person's net worth.*¹⁹⁵ *The Convention and humanitarian law prohibit looting.*¹⁹⁶ *Additionally, the Court considered that the poor socio-economic status and vulnerabilities of the Santo Domingo villagers may incur greater effects and significance compared to other groups, in relation to damaged property.*¹⁹⁷

*Here, the Court proved that after the bombing of Santo Domingo on December 13, 1998, looting occurred in several homes and stores as well as damage and destruction of property.*¹⁹⁸ *However, the Court determined that there was insufficient evidence to prove that the State Armed Forces conducted the looting of the village and not the FARC guerilla forces.*¹⁹⁹ *Although, testimony from some of the villagers of Santo Domingo claimed looting by the State, the Court dismissed the*

190. *Id.* ¶ 263.

191. *Id.* ¶ 266.

192. *Id.* ¶ 268.

193. *Id.* ¶¶ 269-282.

194. *Id.* ¶ 282.

195. *Id.* ¶ 269.

196. *Id.* ¶ 272.

197. *Id.* ¶ 273.

198. *Id.* ¶ 274.

199. *Id.* ¶ 276-277.

evidence as insufficient because the testimony did not directly observe the alleged conduct.²⁰⁰ As a result, the Court could not find the State responsible for the looting that took place after December 13, 1998.²⁰¹

Regarding the damage caused to the village, the Court categorized two types of damage: direct damage as a result of the cluster bomb and all other damage.²⁰² The Court stated that there was insufficient evidence to find the State responsible for the other type of damage, including the destruction of a gas station.²⁰³ Regarding the direct damage from the cluster bomb, the Court evidenced shrapnel from the bomb that cut through wooden planks in four buildings.²⁰⁴ The Court found the State violated Article 21 (Right to Property) with respect to the owners of these four buildings.²⁰⁵

The Court found unanimously that Colombia did not violate:

Article 8 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention to the detriment of the individuals who died in Santo Domingo on December 13, 1998,²⁰⁶ because:

The Court found that the State conducted a serious and thorough investigation in a reasonable amount of time after the Santo Domingo Massacre.²⁰⁷ Therefore, the Court stated that domestic procedures did appropriately attempt to ascertain and determine State responsibility.²⁰⁸

First, the Court ruled that the State illegally altered its position based on a submission of facts not originally alleged and thereupon, refused to validate the State's proffered acknowledgment of responsibility.²⁰⁹ The Court outlined the purpose of the Santo Domingo case, stating that the American Convention determines State responsibility.²¹⁰ The Court

200. *Id.* ¶ 276.

201. *Id.* ¶ 277.

202. *Id.* ¶ 279.

203. *Id.* ¶¶ 279-280.

204. *Id.* ¶ 281. Mr. Mario Galvis, Mr. Victor Palomino, Ms. Margarita Tilano, and Mr. Olimpo Cárdenas are the four respective owners of the buildings. *Id.*

205. *Id.* ¶ 282.

206. *Id.* ¶ 173.

207. *Id.*

208. *Id.*

209. *Id.* ¶ 141.

210. *Id.*

may interpret State responsibility based on a principle of complementarity, meaning viewed from a domestic level.²¹¹ Consequently, the State's domestic measures to ensure human rights must support the State's international treaty-based obligations.²¹²

Next, the Court addressed the State's proffered acknowledgment of responsibility by first summarizing the requirements to submit a claim in the Court's procedural system.²¹³ In order for the system to maintain legal integrity, the parties must present their legal positions and facts succinctly, in good faith, and with legal certainty.²¹⁴ Thus, the Court must protect the "procedural balance" between the parties by barring legal arguments and facts outside of the factual framework originally alleged.²¹⁵ The Court stated that only additional facts that may help to explain or clarify events, or supervening facts that may change the situation, are admissible.²¹⁶

Here, the Court found that the State illegally submitted a new explanation that significantly modified the State's position.²¹⁷ Originally, the State communicated the existence of three on-going judicial proceedings that all referenced being against the crew of the UH1H aircraft.²¹⁸ The State still maintained this position before the Commission, even months after a January 31, 2011 domestic judgment.²¹⁹ The January 31, 2011 judgment blamed the Santo Domingo bombing on a FARC leader named "Grannobles".²²⁰

The Court dismissed the State's attempt to submit the theory via an acknowledgement of responsibility because the fact was not presented and discussed before the Commission.²²¹ In keeping with good faith and legal certainty, the Court barred the State from asserting the Grannobles claim.²²² Additionally, the Court did not consider the Grannobles scapegoat theory to be a supervening fact because the State was aware of the January 31, 2011 judgment, before the Commission issued its re-

211. *Id.* ¶ 142.

212. *Id.* ¶ 143.

213. *Id.* ¶ 144.

214. *Id.*

215. *Id.* ¶ 145.

216. *Id.*

217. *Id.* ¶ 148.

218. *Id.* ¶ 147.

219. *Id.*

220. *Id.* ¶¶ 128, 148.

221. *Id.* ¶ 147.

222. *Id.*

port on March 24, 2011, and because the ruling was not part of the “factual framework” of the case.²²³ The Court refused to analyze the alleged shortcomings of the January 31, 2011 judgment, as originally requested by the representatives.²²⁴

Second, the Court stated that the State’s obligations include providing effective judicial remedies for victims of human rights violations, within a reasonable time, and to ensure every measure necessary to discover the truth of the event, including those responsible.²²⁵ Therefore, the State must conduct a serious, impartial, and effective investigation into the incident.²²⁶

Here, the Court noted that State actors transferred the Santo Domingo case from a military jurisdiction to an ordinary criminal jurisdiction, in which the subsequent Prosecutor’s Office took effective and numerous measures to secure a serious investigation.²²⁷ The Court cited the following: on September 24, 2009, the 12th Criminal Court of the Bogotá Trial Circuit found three servicemen guilty of seventeen counts of homicide and eighteen counts of bodily harm²²⁸ and on June 15, 2011, the Superior District Judicial Court of Bogotá, Criminal Chamber, affirmed the decision.²²⁹ The Court refused to determine the responsibility of other private actors because the Court’s relevant concern is whether the State committed human rights’ violations, not whether private individuals committed such atrocities.²³⁰ Further, the Court stated that the representatives failed to provide sufficient evidence to relate contracts, between Armed Forces and multinational companies operating within the Santo Domingo area, to the facts of the case.²³¹ Thus, the Court determined that the State was not responsible for violations of Article 8 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) of the

223. *Id.* ¶ 148. On May 30, 2000, the Human Rights Unit of the Prosecutor’s Office separated the Santo Domingo case into two judicial proceedings with one concerning the murder of eight individuals of the Armed Forces by FARC members and the other dealing with the Army’s adverse effects on the citizens of Santo Domingo. *Id.* ¶ 148 n.212. The State gave no relevance to the *Grannobles* proceeding in submitting its case before the Commission, so the Court considered the proceeding not within the factual framework of the case. *Id.*

224. *Id.* ¶ 149.

225. *Id.* ¶ 173.

226. *Id.* ¶ 157.

227. *Id.* ¶¶ 159-160.

228. *Id.* ¶ 160.

229. *Id.* ¶ 161.

230. *Id.* ¶ 162.

231. *Id.* ¶ 163.

Convention.²³²

Regarding reasonable time, the Court stated that the State did not violate the allowable time frame for an investigation.²³³ The Court analyzed four factors in making a determination: (1) the complexity of the matter; (2) the procedural activity of the interested party; (3) the conduct of the judicial authorities; and (4) the general effects on the legal situation of the person involved in the proceeding.²³⁴

Here, the Court considered the case complex because of all the technical methods involved in an effective investigation, including the numerous parties associated with the case.²³⁵ Additionally, the Prosecutor's Office conducted numerous investigations, which the Court considered sufficient activities in the "interested party" as well as adequate conduct by judicial authorities.²³⁶ Finally, the Court noted that the victims played an active role in the investigations.²³⁷ Therefore, the Court found that the State did not exceed the reasonable time allotted according to the four factor test.²³⁸

In conclusion, the Court dismissed an additional concern of the representatives and noted several domestic sources further attributing the State's responsibility.²³⁹ Originally requested by the representatives, the Court refused to address domestic legislation, passed in June 2012, because the facts fall outside of the factual framework of this case.²⁴⁰ The Court considered the State's disciplinary proceeding, the State's contentious administrative proceeding, and an agreement between the victims and the Ministry of Defense on November 19, 2008, as evidence of the State's administrative responsibility pertaining to the massacre.²⁴¹ In this manner, the Court concluded that the State conducted a serious and effective investigation in a reasonable amount of time after the Santo Domingo massacre.²⁴²

232. *Id.* ¶ 173.

233. *Id.* ¶ 176.

234. *Id.* ¶ 164.

235. *Id.* ¶ 165.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* ¶¶ 166-176.

240. *Id.* ¶ 166.

241. *Id.* ¶¶ 167-169.

242. *Id.* ¶ 173.

The Court did not rule on:

Article 11(1) (Right to Honor and Dignity) in relation to Article 1(1) of the Convention of the victims of the Santo Domingo massacre,²⁴³ because:

The Court found insufficient evidence presented to analyze an Article 11 (Right to Honor and Dignity) violation.²⁴⁴ The Court recognized that the right to honor prohibits any unlawful attack against “honor and reputation,” imposing on the State an obligation to guard against such attacks.²⁴⁵ The Court deemed that the right to honor relates to self-esteem and self-worth.²⁴⁶

Here, the Court stated that public officials did not consider the population of Santo Domingo to be collaborators and members of the FARC guerrilla group.²⁴⁷ Accordingly, the Court will not infer that the State labeled the villagers as FARC collaborators, when the State explicitly blamed the explosion on FARC members.²⁴⁸

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

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

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

1. Obligation to Investigate

The Court ordered the State to continue on-going investigations and proceedings as well as open any more if needed.²⁴⁹

243. *Id.* ¶ 289.

244. *Id.*

245. *Id.* ¶ 286.

246. *Id.* ¶ 282.

247. *Id.* ¶ 287.

248. *Id.* ¶ 287.

249. *Id.* ¶ 297.

2. Publicly Acknowledge Responsibility

The Court ordered the State to broadcast a public acknowledgment for the responsibility of the Santo Domingo incident via television, radio, or both.²⁵⁰ Additionally, senior State officials must attend the act of acknowledgement in order to create awareness of the consequences of the facts of the case.²⁵¹ Moreover, the Court directed that the victims, representatives, and the State agree on the organization and the characteristics of public act of acknowledgment.²⁵² If victims of the incident no longer live in the village but still wish to attend the public act of acknowledgment, the State must cover the cost of their transportation.²⁵³

3. Publish the Judgment

The Court ordered the State to publish the following: (1) the official summary of the Court's Judgment in the official gazette; (2) the official summary of the Court's Judgment in a national newspaper with widespread circulation; and (3) the Court's full Judgment linked on an official web site for one year.²⁵⁴

4. Provide Medical Treatment

The Court noted the harm suffered by the victims and ordered the State to provide, free of charge, medical, psychological, or psychosocial attention and treatment for the victims, including the next of kin.²⁵⁵ This included any medicines and tests appropriately required.²⁵⁶ Treatment locations should be as close to the victims' homes as possible and for as long as necessary.²⁵⁷

5. Judgment as a Form of Reparation

The Court noted the Judgment itself serves as a form of reparation for the victims.²⁵⁸

250. *Id.* ¶ 301.

251. *Id.*

252. *Id.* ¶ 302.

253. *Id.*

254. *Id.* ¶ 303.

255. *Id.* ¶ 309.

256. *Id.*

257. *Id.*

258. *Id.* ¶ 323.

6. Train State Officials in Human Rights

The Court urged the State to continue adopting and strengthening a required program to train the members of the Air Force in national and international standards for human rights.²⁵⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court did not find it appropriate to award additional monetary compensation to the victims who had already received reparations from domestic courts.²⁶⁰ However, the Court ordered the State to execute a domestic mechanism, comparable to the standards of a reasonable contentious court, to award pecuniary and non-pecuniary damages to the victims who did not have any legal recourse.²⁶¹

2. Non-Pecuniary Damages

[Same as Pecuniary Damages]

3. Costs and Expenses

The Court awarded \$5,000 to 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 for the costs and expenses of the proceedings.²⁶²

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

\$ 5,000

259. *Id.* ¶ 320.

260. *Id.* ¶ 336.

261. *Id.* ¶ 337.

262. *Id.* ¶ 344.

C. Deadlines²⁶³

The State must make an act of public acknowledgement of responsibility within six months to a year of notification of the Judgment.²⁶⁴

The State must publish the Judgment within six months of notification of the Judgment.²⁶⁵

The State must implement a mechanism to award pecuniary and non-pecuniary damages to victims who do not have any legal recourse and reimburse the costs and expenses of the representatives within one year.²⁶⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

February 20, 2013: The representatives submitted a request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs to clarify various aspects related to reparations in favor of the victims.²⁶⁷

A. Composition of the Court²⁶⁸

Diego García-Sayán, President
 Leonardo A. Franco, Judge
 Margarete May Macaulay, Judge
 Rhadys Abreu Blondet, Judge
 Alberto Pérez Pérez, Judge
 Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court's judgment categorized each request for interpretation

263. The Court did not provide a deadline by which the State must train the Air Force in human rights, but rather urged the State's compliance.

264. *Id.* ¶ 301.

265. *Id.* ¶ 303.

266. *Id.* ¶¶ 337, 345.

267. *Massacre of Santo Domingo v. Colombia*, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), No. 263 ¶ 2 (Aug. 19, 2013).

268. For reasons beyond his control, Judge Manuel E. Ventura Robles did not take part in the deliberation or signature of this judgment. *Id.* at n.1.

according to seven groups.²⁶⁹ First, the representatives stated that paragraph 337 of the Judgment, which orders the State to administer a domestic mechanism to award damages to victims who do not have any legal recourse, did not indicate the reparation due to sixteen individuals in violation of their rights under Article 4 (Right to Life) and which of the victims had recourse to this mechanism.²⁷⁰ The Court stated that paragraph 337 of the judgment did not include the heirs of the sixteen victims.²⁷¹ Moreover, the Court refused to re-assess the appropriateness of the domestic measures ordered to establish adequate reparations.²⁷² Consequently, the Court rejected the representatives expanded interpretation.²⁷³

Second, the representatives indicated that five victims did not receive compensation for damage to their respective properties and requested clarification whether the victims could use paragraph 337.²⁷⁴ The Court found this request inadmissible because accepting the interpretation proposed by the representatives would require modification and expansion on the Court's Judgment.²⁷⁵

Third, the representatives argued that there were no reparations ordered for the victims of the displacement and requested whether the victims could have recourse pursuant to paragraph 337.²⁷⁶ Additionally, the representatives asked whether the victims of forced displacement could file administrative actions against the State.²⁷⁷ The Court stated that the Judgment afforded the victims no compensation for hardships based on their displacement, and rejected this request.²⁷⁸

Fourth, the representatives requested clarification on the reparations owed to the unidentified displacement victims.²⁷⁹ The Court refused to determine the applicable domestic provisions or attempt to identify the victims.²⁸⁰ The Court stated that the Judgment merely established that the Court's decision will not hinder individuals entitled to some type of action on the domestic level.²⁸¹

Fifth, the representatives inquired whether the Court would allow

269. *Id.* ¶¶ 14-56.

270. *Id.* ¶ 14.

271. *Id.* ¶ 19.

272. *Id.* ¶ 22.

273. *Id.* ¶ 23.

274. *Id.* ¶ 24.

275. *Id.* ¶ 30.

276. *Id.* ¶ 31.

277. *Id.* ¶ 32.

278. *Id.* ¶ 39.

279. *Id.* ¶ 40.

280. *Id.* ¶ 42.

281. *Id.*

the next of kin of Mr. Luis Enrique Parada Ropero, having not received compensation and nearing the two year expiration date, recourse under Law 288 of 1996 or paragraph 337 of the judgment.²⁸² The Court stated that the only next of kin at issue, Ms. Myriam Soreira Tulibila Macualo, gave no indication why she failed to file requests for reparations.²⁸³ As a result, the Court refused to decide the validity of domestic mechanisms in adequately addressing reparations and rejected the representatives' request.²⁸⁴

Sixth, the representatives asked whether the Court would allow eighteen victims in the same situation as the next of kin of Mr. Luis Enrique Parada Ropero, not recognized as injured parties, recourse under Law 288 of 1996 or paragraph 337 of the judgment.²⁸⁵ The Court stated paragraph 337 applies only to victims and injured parties in the Judgment, and therefore rejected this request.²⁸⁶

Finally, the representatives asked whether the Court would allow other family members, not represented at the Inter-American level and without reparations from contentious courts, recourse under Law 288 of 1996 or paragraph 337 of the judgment.²⁸⁷ The Court rejected this request for the same reasons previously stated.²⁸⁸

Following the Court's rejection of each request for interpretation, the Court ruled unanimously to reject as inadmissible the representative's request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.²⁸⁹

VI.COMPLIANCE AND FOLLOW-UP

[None]

VII.LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits](#)

282. *Id.* ¶ 43.

283. *Id.* ¶ 47.

284. *Id.* ¶ 48.

285. *Id.* ¶ 50.

286. *Id.*

287. *Id.* ¶ 55.

288. *Id.* ¶ 56.

289. *Id.* "Decides" ¶ 1.

[and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 259 \(Nov. 30, 2012\).](#)

2. Decisions on Merits, Reparations and Costs

[Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 259 \(Nov. 30, 2012\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Santo Domingo Massacre v. Colombia, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\), No. 263 \(Aug. 19, 2013\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Santo Domingo Massacre v. Colombia, Admissibility Report, Report No. 25/03, Inter-Am. Comm'n H.R., Case No. 12.416 \(Mar. 6, 2003\) \(Available only in Portuguese\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Santo Domingo Massacre v. Colombia, Report on the Merits, Report No. 61/11, Inter-Am. Comm'n H.R., Case No. 12.416 \(Mar. 24, 2011\).](#)

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

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