

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

OF JULY 31, 2013

CASE OF BREWER CARÍAS v. VENEZUELA

HAVING SEEN:

1. The brief submitting the case against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") presented on March 7, 2012 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" or "the Court"), in which it forwarded the Report on Merits No. 171/11 and offered one expert opinion. The Commission also requested the transfer, where pertinent, of five statements rendered in five previous cases against Venezuela.

2. The brief of pleadings, motions and evidence submitted by the representatives¹ on July 7, 2012, in which they offered the statement of the alleged victim, two testimonies and five expert opinions.

3. The notes of September 12, 2012, in which the Secretariat of the Court (hereinafter "the Secretariat") informed the parties and the Inter-American Commission that the President of the Court, in consultation with the other judges of the Court, had decided to accept the excuse presented on July 11, 2012 by Judge Eduardo Vio Grossi with regarding to acting as a judge in this case.

4. The brief of November 12, 2012, in which Venezuela filed "preliminary objections," answered the brief submitting the case and presented its observations to the brief of pleadings, motions and evidence (hereinafter "answer brief"). Also, the State indicated that it "reject[ed]" the excuse presented by Judge Vio Grossi (*supra* Having Seen 3). In that brief, the State offered one expert opinion and eight testimonies.

5. The Order of the Acting President of the Court² of November 23, 2012, in which he decided, *inter alia*, that the allegations filed by Venezuela in its answer brief concerning

¹ In a communication of April 24, 2012 and its attachment, Mr. Allan Brewer-Carías, the alleged victim, reported that Messrs. Pedro Nikken, Helio Bicudo, Claudio Grossman, Juan E. Méndez, Douglas Cassel and Héctor Faúndez Ledesma would represent him before the Court and that Mr. Nikken would be the "intervening lawyer to whom all communications [in this case] should be sent"

the alleged lack of impartiality of five Judges and of the Secretary of the Court did not constitute a preliminary objection,³ that they were groundless, and that the full Court should continue to hear this case.

6. The brief submitted on November 23, 2012 by Judge Vio Grossi addressed to the President of the Court, in which he referred to the State's comments reject [ing]" his excuse in this case (*supra* Having Seen 4).

7. The Order of the Court of November 29, 2012, confirming that Judge Vio Grossi's excuse had been submitted and accepted by the President of the Court, in consultation with the other judges, in accordance with the statutory norms and Rules and that it considered that the State's arguments were inadmissible with respect to its "rejection" of said excuse (*supra* Having Seen 3, 4 and 6).

8. The brief presented by the State on November 30, 2012, in which it submitted the attachments to its answer brief, together with the "curriculum vitae" and contact information of Mr. Octavio José Sisco Ricciardi, proposed as an expert witness in the answer brief (*supra* Having Seen 4).

9. The briefs of March 5 and 6, 2013, in which the Commission and the representatives, respectively, presented their observations to the preliminary objection filed by the State of Venezuela (*supra* Having Seen 4 and 5).

10. The notes of March 19, 2013, in which the Secretariat reported that the Court had scheduled the public hearing in this case to take place during its 99th Regular Period of Sessions to be held from May 13-31, 2013 and, according to Article 46(1) of the Court's Rules of Procedure, requested that the parties and the Inter-American Commission submit their respective definitive lists of deponents (hereinafter "definitive lists") no later than April 2, 2013, and, for reasons of procedural economy and in application of said Article, that they indicate those who could render their statements by affidavit and those who should be summoned to testify at a public hearing in order of priority.

11. The communication of March 26, 2013, in which the representatives requested an extension of the deadline for submitting the definitive list of deponents.

12. The notes of March 27, 2013, in which the Secretariat informed the parties and the Commission that the extension requested by the representatives (*supra* Having Seen 11) was granted until April 8, 2013, and that said extension was also granted ex officio to the State and the Commission. Likewise, it explained that the hearing in this case could not be held during the period of sessions of May 2013 and that they would be notified of the new date in due course, as soon as it had been rescheduled.

13. The brief of April 2, 2013, in which the State submitted its definitive list of deponents and indicated that it considered that all the deponents proposed should be summoned to testify at a public hearing and, if this was not possible, that the statements of two witnesses could be rendered by affidavit. The State also expressed its "opposition", *inter alia*, to the extension granted to the representatives to present their definitive list

² Judge Alberto Pérez Pérez served as Acting President for the purposes of this Order.

³ As a preliminary objection, Venezuela presented a challenge against Judges Diego García -Sayán, Manuel E. Ventura Robles, Leonardo A. Franco, Margarette May Macaulay and Rhadys Abreu Blondet, as well as against Pablo Saavedra Alessandri " in his capacity as Secretary" of the Court.

and to “the Court’s decision to suspend the Public hearing in the 99th Period of sessions,” which causes difficulties for the State and violates the right to procedural equality.

14. The notes of April 4, 2013, in which the Secretariat indicated that the Court or its President would consider the possibility of granting an additional procedural opportunity for the parties and the Commission to confirm the information contained in the definitive lists.

15. The briefs of April 8, 2013, in which the representatives and the Commission submitted their definitive lists of deponents. The representatives also reiterated the position expressed in their brief of April 2 regarding the difficulty of having to present the definitive list, even though no date had been set for the hearing, and mentioned the possibility that the public notaries in Venezuela would refuse to officially certify the statements offered.⁴

16. The notes of April 22, 2013, in which the Secretariat acknowledged receipt of the lists, transmitted the respective definitive lists of deponents and indicated that the term for submitting observations to these lists would be established once the date of the hearing had been set. The notes also stated that the State’s objection to the extension granted to the representatives (*supra* Having Seen 11 to 13) and the arguments made by the parties with respect to setting the date of the hearing, would be brought to the attention of the Court, for the pertinent purposes.

17. The notes of June 4, 2013, in which the Secretariat informed the parties and the Commission that the Court had programmed the public hearing in this case for September 3 and 4, 2013, during its 100th Regular Period of Sessions. The parties were also informed that the President of the Court had decided to grant a procedural opportunity to confirm the information offered in their respective definitive lists (*supra* Having Seen 13 a 15), for which they were granted a term until June 14, 2013.

18. The brief of the Commission of June 7, 2013 and the briefs of the representatives and of the State of June 14, 2013, in which they confirmed the information offered in their definitive lists of deponents. In addition, the representatives forwarded the curricula vitae of Messrs. Ollarves Irazábal and García Belaúnde and indicated that they were being offered for the “first time on that date.”

19. The notes of the Secretariat of June 18, 2013, in which, following the instructions of the President of the Court and pursuant to Article 46(2) of its Rules of Procedure, the parties were granted a term until June 28, 2013 to submit observations to the definitive lists and to the aforementioned complementary briefs (*supra* Having Seen 13, 15, 17 and 18). The Secretariat also indicated that the President would not grant a term for observations to the offer of the expert opinions of Messrs. Ollarves Irazábal and García Belaúnde, since the representatives were not requesting a substitution of deponents or referring to some exceptional assumption of admissibility of the evidence (*supra* Having Seen 18).

20. The brief of June 19, 2013, in which the representatives asked “the President of the Court to reconsider his decision not to request observations on [the offer of] the expert witnesses Ollarves Irazábal and García Belaúnde” (*supra* Having Seen 19) and, in addition requested that “the Court consider this communication as a request for the

⁴ They indicated that, should this situation arise again, they would submit a timely request to present those statements in a brief signed under oath by the deponents resident in Venezuela”.

substitution of professors Alberto Arteaga Sánchez and Rafael Chavero Gadzik [...] with professors Jesús Ollarves Irazábal and Domingo García Belaúnde.”

21. The notes of the Secretariat of June 21, 2013, in which the President granted the State a period until July 1, 2013 to submit its observations to the representatives’ request to substitute two expert witnesses, submitted in their brief of June 19, 2013 (*supra* Having Seen 20).

22. The brief of June 27, 2013 and its attachments, in which the representatives submitted their observations to the definitive list of the State, and objected to the statements of seven witnesses and challenged Mr. Sisco Ricciardi, proposed as an expert witness by the State.

23. The brief of June 28, 2013, in which the Commission stated that it had “no observations to make to the definitive lists of the representatives or of the State of Venezuela”. Likewise, the Commission requested the opportunity to submit questions to Messrs. Arteaga Sánchez, Canova González and Chavero Gadzik, proposed as expert witnesses by the representatives.

24. The brief of June 28, 2013 and its attachments, in which the State submitted its observations to the definitive list of the representatives and made observations to the representatives’ request to substitute two expert witnesses. The State also objected to the statements of two witnesses, and challenged the expert witnesses offered as substitutes and the other three expert witnesses offered by the representatives, as well as the expert witness offered by the Commission.

25. The brief of July 2, 2013 and its attachments, in which the State requested the substitution of a witness.

26. The notes of July 2, 2013, in which the Secretariat, following the instructions of the President, conveyed the aforementioned observations of the representatives and the State (*supra* Having Seen 22 and 24) to the challenged expert witnesses, who were granted a term until July 8, 2013 to submit their observations to the respective challenges made against them. The representatives were also granted a term until July 8, 2013 to submit their observations to the request to substitute a witness proposed by the State (*supra* Having Seen 25).

27. The briefs submitted on July 4, 6 and 8, 2013, in which Mr. Sisco Ricciardi, proposed as an expert witness by the State, Messrs. Ollarves, Canova, Tiffer, Gimbernat, and García Belaúnde, offered as expert witnesses by the representatives, and Mr. Zeitune, offered as an expert witness by the Commission, submitted their observations to the respective challenges against them.

CONSIDERING THAT:

1. The offer and the admission of evidence, together with the summons of alleged victims, witnesses and expert witnesses are regulated, *inter alia*, in Articles 35(1)(f), 40(2)(c), 41(1) (c), 46, 47, 48, 49, 50, 52(3), 57 and 58 of the Rules of the Court.

2. The Commission offered as evidence an expert opinion (*supra* Having Seen 1, 15 and 18). The representatives offered the statement of the alleged victim, two witness

statements and five expert opinions and subsequently requested the substitution of the statements of two of the expert witnesses (*supra* Having Seen 2, 15, 18 and 20). The State offered eight testimonies and one expert opinion and subsequently requested the substitution of the statement of one of the witnesses (*supra* Having Seen 4, 13, 18 and 25).

3. The Court guaranteed the parties the right of defense in respect of the offers of evidence contained in their respective briefs submitting the case, of pleadings and motions and the answer brief, as well as in their definitive lists and in the requests for the substitution of deponents (*supra* Having Seen 19, 21 and 26).

4. In this case, the representatives of the alleged victim requested an extension of the term for presenting the definitive list of deponents, which was granted and, *de officio*, was also granted to the State and the Commission (*supra* Having Seen 11 and 12). In this regard, Venezuela expressed its opposition to the extension granted in its definitive list of deponents (*supra* Having Seen 13). The State held, *inter alia*, that this was a non-renewable term, that the representatives' request had no legal basis and that it resulted in "unequal treatment for the Venezuelan State, which proceeded to submit the definitive list of deponents, within the non-renewable term established in the Rules."

5. With respect to the State's objection, this Presidency considers it pertinent to point out that Article 46(1)⁵ of the Court's Rules of Procedure specifies that the parties and the Commission will be requested to submit their definitive lists of deponents, but it does not stipulate a specific term, nor does it state that the term granted is non-renewable. Furthermore, the President emphasizes that the extension for submitting the definitive list of deponents was granted both to the representatives and to the State and the Commission, under equal conditions (*supra* Having Seen 12).

6. Upon granting the term to submit the definitive lists of deponents, the parties and the Commission were notified, through notes of the Secretariat, that the Court had scheduled the public hearing in this case for the period of sessions from May 13 to 31, 2013 (*supra* Having Seen 10). Subsequently, the Secretariat of the Court informed the parties and the Commission that the Court would be unable to hear the case during that period of sessions and that they would be notified of the new date as soon as it had been rescheduled, and confirmed that they should present their definitive lists of deponents (*supra* Having Seen 12). Once the Court had rescheduled the period of sessions in which the public hearing would be held, the President of the Court authorized another procedural act to complement the definitive list of deponents, granting the parties and the Commission an opportunity to confirm or withdraw the statements offered (*supra* Having Seen 17). Once those complementary briefs to the definitive lists (*supra* Having Seen 18) had been received, the President, in accordance with Article 46(2)⁶ of the Rules of the

⁵ Article 46 (1) (Definitive list of declarants) of the Rules establishes that:

1. The Court will request the Commission, the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State to submit definitive lists of declarants, in which they shall confirm or retract offers of evidence submitted within time in accordance with Articles 35(1)(f), 36(1)(f), 40(2)(c), and 41(1)(c) of these Rules of Procedure, in the form of statements of alleged victims, witnesses, or expert witnesses. Additionally, they must indicate to the Court their position as to which of the declarants offered should be summoned to the hearing, where applicable, and which declarants can render their statements through affidavits.

⁶ Article 46 (2) of the Rules of Procedure establishes that:

2. The Court shall transmit the definitive list of deponents to the opposing party and shall establish a time limit in which to present, if necessary, observations, objections, or challenges.

Court, proceeded to transmit the complementary briefs to the definitive lists and allowed a period for the parties to submit observations (*supra* Having Seen 19).

7. The representatives and the State submitted observations regarding the rescheduling of the date of the hearing and on the fact that they had been asked to present their definitive lists when the date of the hearing in this case had not yet been set. The representatives noted that “unusual situations [had arisen] which even contradict the Rules, for reasons external to the parties.” For its part, Venezuela argued, *inter alia*, that “[the] Court’s decision to suspend the hearing [... was] intended to affect [the] witness statements proposed [by the State] and benefit the alleged victim [...].” Given the serious nature of the allegations made by the parties, this Presidency considers it important to emphasize that, when they were informed through notes of the Secretariat that the Court would need to reschedule the hearing of the case for a subsequent period of sessions, the summons to a hearing referred to in Article 50⁷ of the Court’s Rules of Procedure had not yet been issued. Furthermore, the President considers that no harm was done, as the parties have alleged, given that, once the date of the hearing was reset, they were granted the procedural opportunity necessary to update the information provided in their definitive lists, and were also offered an opportunity to submit their observations to those lists and to raise objections and challenges as established in Articles 47 and 48 of the Rules of the Court. Moreover, when they considered it necessary, the parties made use of the opportunity granted in Article 49 of the Court’s Rules to request the substitution of deponents, a matter which will be decided in this ruling.

8. This Presidency deems it appropriate to obtain the statement of the alleged victim Allan Randolph Brewer Carías, proposed by the representatives, and the witness statement of Ángel Alberto Bellorín, proposed by Venezuela, which were not challenged, nor was any substitution proposed in this regard. Consequently, the President admits this evidence so that the Court may assess its value at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment.

9. The representatives of the alleged victim objected to the admission of seven witness statements offered by the State and challenged the expert witness offered by the State. For its part, the State objected to the two witness statements offered by the representatives, challenged the five expert witnesses proposed by the representatives (including the two expert witnesses proposed as substitutes), and opposed the request to substitute two expert witnesses proposed by the representatives. Furthermore, the State challenged the expert witness offered by the Inter-American Commission. The State also asked that the Commission’s request to transfer statements rendered in five other cases against Venezuela be considered retracted. The Commission said it had no observations to make to the definitive lists of the representatives or the State.

10. The President will examine the following matters on which there is some dispute or some particular request or question to resolve: a) the request to substitute two expert statements offered by the representatives; b) the request to substitute the statement of a witness offered by the State; c) the objection raised by the representatives to the expert witness proposed by the State ; d) the challenge made by the State to four expert witnesses proposed by the representatives; e) the objections of the representatives to the

⁷ Article 50(1) (Offering, Convocation and Appearance of Deponents) of the Rules states:

1. The Court or its Presidency shall issue an order deciding on the observations, objections, and challenges presented, as applicable; defining the object of the statement of each one of the deponents; requiring the submission of the affidavits deemed appropriate; and summoning all those the Court deems appropriate to a hearing, if necessary.

admissibility of six witness statements offered by the State; f) the objections of the State to two witness statements offered by the representatives; g) the objection raised by the State to the expert witness proposed by the Inter-American Commission; h) the admissibility of the expert opinion offered by the Commission; i) the request submitted by the Commission to formulate questions to three expert witnesses offered by the representatives; j) the Commission's request to transfer to this case five statements rendered within the framework of other cases against Venezuela; k) the manner in which the statements and expert opinions will be received; and l) the final oral and written arguments and observations.

A) Request to substitute two expert statements offered by the representatives

11. In their brief of pleadings and motions the representatives offered Messrs. Alberto Arteaga Sánchez and Rafael Chavero Gadzik as expert witnesses, and confirmed this offer in their definitive list of deponents. The first deponent was to render an expert opinion at a hearing and the second by affidavit (*supra* Having Seen 2 and 15). In their definitive list the representatives also referred, in general terms, to the "difficulty in determining with certainty the availability of the deponents who must attend a hearing when [...] they [did] not know the date on which it would be held, which could involve the possibility of substituting one of the deponents proposed, once that date has been decided." Subsequently, when the President granted a procedural opportunity to confirm the information in the definitive lists (*supra* Having Seen 17), of June 14, 2013 the representatives presented a brief in which they did not include Messrs. Alberto Arteaga Sánchez and Rafael Chavero Gadzik as expert witnesses, but indicated that they were presenting "for the first time" the offer of Messrs. Jesús Ollarves Irazábal and Domingo García Belaúnde as expert witnesses and provided their curriculum vitae (*supra* Having Seen 18). On that occasion, the President did not grant a period to submit observations to the offer of the expert opinions of Messrs. Ollarves Irazábal and García Belaúnde, given that the representatives did not request a substitution of deponents (*supra* Having Seen 19). In the brief of June 19, 2013 (*supra* Having Seen 20), the representatives formally requested that the expert statement of Mr. Alberto Arteaga Sánchez be substituted with that of Mr. Jesús Ollarves Irazábal and also that the expert opinion of Mr. Rafael Chavero Gadzik be substituted with that of Mr. Domingo García Belaúnde (*supra* Having Seen 20).

12. In its observations (*supra* Having Seen 24), Venezuela objected to the decision to admit those substitutions and, furthermore, challenged the proposed substitutes. This Presidency shall first rule on the request for substitution and, if appropriate, shall subsequently analyze the challenges filed.

13. The State held that the request to substitute expert witnesses should be "declared inadmissible" by the Court, because the representatives had acted in "flagrant violation of Article 46" of the Rules of the Court, which requires them to confirm or withdraw the offer made in their brief of pleadings and motions and does "not [allow them] to change, without any justification, the deponents offered in the brief of pleadings, motions and evidence." Venezuela affirmed that, in the brief confirming the definitive lists, the representatives of the alleged victim "changed the expert witnesses, without giving the reasons" for that change. According to the State, "the representative of the alleged victim [e]xtemporaneously excused himself before the Court, and requested reconsideration of the substitution." Venezuela further argued that "the representatives of Allan Brewer Carías did not present any evidence to show that the expert witnesses originally offered, namely Alberto Arteaga Sánchez and Rafael Chavero 'had and have ineludible previous

commitments that prevent them from rendering their opinion". In referring specifically to "[t]he presumed substitution of the expert witness Rafael Chavero with [...] Domingo [G]arcía Belaúnde [, ...it affirmed that this constitutes] a flagrant violation of Articles 40(2)(c), 46(1) and 49 of the Rules of the Court." The State further argued that the object of the expert opinion of the substitute expert witness García Belaúnde differs from the object of the opinion of expert witness Rafael Chavero offered in the brief of pleadings and motions, which contravenes Article 49 of the Rules of the Court. In addition, the State requested that the Court declare that the offers of the two expert witnesses, Alberto Arteaga Sánchez and Rafael Chavero Gadzik, and the objects of their expert opinions, had been withdrawn because they were not expressly ratified in the brief confirming the definitive lists.

14. First, the President will consider the procedural stage at which the representatives requested the substitution of two persons proposed to render an expert opinion which, according to Venezuela, constitutes a breach of Article 46 of the Rules of the Court. Subsequently, he will consider whether or not the requests for substitution meet the requirements stipulated in Article 49 of the Rules of the Court (*infra* Considering paras. 18 to 23).

15. Article 49 of the Court's Rules of Procedure does not specify a term within which the parties or the Commission should request the substitution of deponents offered in their brief of pleadings and motions. The Court has pointed out, however, that "the parties must take all due care when making their offers of evidence and, before submitting their definitive lists, to ensure that those persons they have proposed to appear at a public hearing are in a position to be summoned by the Court."⁸

16. In this case, the expert witnesses whose substitution was requested by the representatives were offered in a timely manner in the brief of pleadings and motions and were ratified in the definitive list of deponents. However, in the additional brief confirming the information provided in the definitive lists (*supra* Having Seen 18), the representatives did not include Messrs. Alberto Arteaga Sánchez and Rafael Chavero Gadzik as expert witnesses, but included, for the first time, the offer of Messrs. Jesús Ollarves Irazábal and Domingo García Belaúnde as expert witnesses. Five days later, on June 19 (*supra* Having Seen 20), the representatives submitted a brief specifying that in their brief confirming the definitive list they did indeed intend to submit a request to substitute the expert witnesses, as they had announced that they might do in their definitive list (*supra* Considering para. 11), and asked the President to review his decision to not consider this as a request for substitution. Furthermore, the representatives requested that the brief of June 19 be considered as the request for substitution. Bearing in mind that in this last brief the representatives included, *prima facie*, information on the requirements stipulated in Article 49 of the Rules, the President granted the State a period to submit observations to the request for substitution (*supra* Having Seen 21).

17. With regard to the fact that, in the brief confirming their definitive list of expert witnesses, the representatives did not explain why they were not including Messrs. Alberto Arteaga Sánchez and Rafael Chavero Gadzik but, on the contrary, offered for the first time Messrs. Jesús Ollarves Irazábal and Domingo García Belaúnde as expert witnesses, this cannot have the legal effect of suggesting that they are withdrawing two expert opinions. Although the representatives did not mention in the brief confirming the definitive list that

⁸ Cf. *Case of Rosendo Cantú et al. v. United Mexican States*. Order of the Inter-American Court of Human Rights of May 19, 2010, Considering para. 16.

they were requesting the substitution of two expert witnesses, they did so formally five days later. Consequently, it is admissible to examine the merits of the request for substitution proposed in the representatives' brief of June 19, 2013.

18. It is appropriate, then, to consider whether the requests for substitution comply with the requirements stipulated in Article 49⁹ of the Rules of the Court.

19. First, in observance of Article 49 of the Court's Rules of Procedure, the State was granted an opportunity to submit observations regarding said request for substitution (*supra* Having Seen 21). This Presidency will take into consideration the views of the State regarding the supposed lack of compliance with the requirements stipulated in Article 49 of the Rules of the Court.

20. As to the requirement that the request for substitution must be "well-founded", the President points out that the representatives explained that the expert witnesses they were asking to substitute "had, and have, previous ineludible commitments that prevent them from rendering their expert opinions on the date recently set by the Court." The State argued that the representatives did not comply with that requirement because they did not provide "any evidence" to prove that affirmation. For a request to be considered "well-founded" it is important that it explains the motives or reasons why the person offered cannot render the statement.¹⁰ The Rules do not require the party requesting the substitution to present documentary or testimonial evidence to prove the veracity of that reason. Consequently, the request is properly founded since the representatives explained the reason why the persons initially proposed as expert witnesses could not render their statement.

21. As to the requirements to name the substitute and to respect the object of the expert opinion originally offered, the President finds that both these stipulations were met with respect to the request to replace Mr. Alberto Arteaga Sánchez with Mr. Jesús Ollarves Irazábal. The object of the statement of the substitute expert witness (Jesús Ollarves Irazábal) is the same as that of the expert witness offered in the brief of pleadings and motions (Alberto Arteaga Sánchez).

22. Based on the foregoing considerations, the President accepts the substitution of the expert opinion of Mr. Alberto Arteaga Sánchez with that of Mr. Jesús Ollarves Irazábal proposed by the representatives, pursuant to Article 49 of the Rules. Subsequently (*infra* Considering paras. 51 to 58), he shall rule on the challenge made by the State against Mr. Jesús Ollarves Irazábal.

⁹ This provision states 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.

¹⁰ *Cf. of Case of Gelman v. Uruguay*, Order of the President of the Court of September 10, 2010, Considering paras. 8 and 10; *Case of Gelman v. Uruguay*, Order of the President of the Court of September 23, 2010, Having Seen 2 and Considering para. 6; *Case of Contreras et al. v. El Salvador*. Order of the President of the Court of April 14, 2011, Considering paras. 16 to 18; *Case of the Massacre of Santo Domingo v. Colombia*. Order of the President of June 5, 2012, Considering paras. 17 to 19; *Case Artavia Murillo et al. ("In-vitro fertilization") v. Costa Rica*. Order of the President of the Court of August 6, 2012, Considering paras. 6 and 7; and *Case J v. Peru* Order of the Acting President of the Court of April 16, 2013, Considering para. 10.

23. As to the request to substitute the expert opinion of Mr. Rafael Chavero Gadzik with that of Mr. Domingo García Belaúnde, the representatives explained that the objects were not the same because Mr. García Belaúnde's opinion "has been adapted to the circumstance that he is an academic who is not Venezuelan,"¹¹ unlike Mr. Chavero. In this regard, it is clear that the object of the statement of the expert witness proposed as a substitute¹² is indeed substantially different to the object of the expert opinion of Mr. Rafael Chavero Gadzik.¹³ The change of object is not merely a formality, but affects its essential content.¹⁴ Therefore, in accordance with Article 49 of the Rules of the Court, the request to substitute Mr. Rafael Chavero's expert opinion with that of Mr. Domingo García Belaúnde is declared inadmissible. Furthermore, it should be understood that, having explained that Mr. Rafael Chavero has "prior ineludible commitments that [...] prevent him from rendering his expert opinion," the representatives have withdrawn that evidence. Therefore, it is unnecessary to rule on the challenge filed by the State against Mr. Rafael Chavero.

B) Request to substitute a witness offered by the State

24. In its answer brief the State offered the witness statement of Mr. Arcadio Delgado Rosales, with the proposed object of discussing "[t]he System of selection, certification and training of Venezuelan judges" (*supra* Having Seen 4). In its definitive list of deponents and in the brief confirming the information included in that list (*supra* Having Seen 13 and 18), the State confirmed this offer of evidence and, regarding the object, added that it would also refer to "[c]ompetitive processes and credentials for Admission to the Judicial Profession." After submitting those briefs (*supra* Having Seen 25), the State made a request to substitute the statement of the witness Arcadio Delgado Rosales with that of Luis Fernando Damiani Bustillos, explaining that he would "discuss [...] the object confirmed" in the definitive list of deponents. In this regard, the State noted that on July 1, 2013 it received a communication "in which the witness, Magistrate Arcadio Delgado, explained that he was unable to attend the hearing, either personally or by Affidavit, as he had to fulfill a number of prior commitments, both in the Constitutional Chamber of the High Court, and at the National School for Magistrates, and was also attending an event in the city of Bogotá, Colombia, in his capacity as a member of the Coordination and Monitoring Committee of the Ibero-American Judicial Summit." Venezuela provided a copy of the aforementioned communication of July 1, 2013 signed by Mr. Delgado Rosales.

¹¹ Brief submitted by the representatives before the Court on June 19, 2013.

¹² The representatives indicated that the object of Mr. García Belaúnde's expert opinion was to discuss "the **priority that a national judge must give to resolving appeals and claims** submitted to his jurisdiction, denouncing the **violation of human rights** enshrined in the Constitution and the American Convention on Human Rights, according to the standards of Ibero-American Constitutional Law and with particular reference to those standards insofar as these are accepted by the current Venezuelan Constitution." In addition, his expert opinion would discuss "the effects of the **delay in processing the annulment of the actions demanded by professor Brewer Carías** in the proceeding against him, due process and other fundamental rights of the latter, as well as other matters within his area of expertise." (*emphasis added*)

¹³ The object of Mr. Chavero Gadzik's statement was to discuss "**the provisional judicial system** in Venezuela and **its effects on judicial independence** in cases of political interest to the government; the status and provisional nature of the judicial system during the period between 2002 and 2005 and its development up to the present day, with emphasis on any relevant amendments; and the **provisional status of the Attorney General's Office** of Venezuela and **its relevance to the criminal proceeding against professor Brewer Carías**, and other matters within his area of expertise." (*emphasis added*)

¹⁴ Cf. *Case of Forneron and Daughter v. Argentina*. Order of the President of the Court of September 13, 2011, Considering para. 33; *Case of Gudiel Álvarez et al. v. Guatemala*. Order of the President of the Court of March 20, 2012, Considering para. 15, and *Case of Mohamed v. Argentina*. Order of the President of the Court of June 4, 2012, Considering para. 52.

25. This Presidency has confirmed that the State offered said testimonial evidence at the proper procedural moment. Similarly, its request for substitution meets the requirements stipulated in Article 49 of the Rules of the Court (*supra* Considering para. 18). Venezuela provided a well-founded explanation of the reasons why Mr. Arcadio Delgado Rosales could not render a witness statement and even provided a document signed by him, stating his reasons. Furthermore, the substitution respects the object of the witness originally offered. Likewise, the President emphasizes that, pursuant to the provisions of Article 49 of the Rules of the Court, he granted the representatives of the alleged victim an opportunity to submit their observations to Venezuela's request for substitution and they did not submit any comments in this regard (*supra* Having Seen 26).

26. Finally, the President notes that, in the brief confirming the information offered in the definitive list of deponents, the State added some elements to the object of the witness statement of Arcadio Delgado Rosales.¹⁵ The representatives did not submit any observations in that regard. This Presidency considers that this change does not constitute a substantial modification or extension of the object, but rather it specifies in greater detail the object originally proposed in the answer brief.¹⁶

27. Based on the foregoing considerations, the President accepts the substitution of the witness statement of Mr. Arcadio Delgado Rosales with that of Mr. Luis Fernando Damiani Bustillos, as requested by the State, pursuant to Article 49 of the Rules and, therefore decides to receive the witness statement of Mr. Luis Fernando Damiani Bustillos. The object of this statement and the manner in which it will be received shall be decided the operative part of this Order (*infra* Operative Paragraph 1).

C) Challenge by the representatives to the expert witness proposed by the State

28. In its answer brief the State offered the expert opinion of Mr. Octavio José Sisco Ricciardi to testify on: "the Judicial Disciplinary System of Venezuela; [h]istorical background [; c] omparison between the previous disciplinary system and the one established in the new Constitution of the Bolivarian Republic of Venezuela of 1999[; considerations on the Code of Ethics for Venezuelan Judges [, e] xplaining the differences between both systems and Comparative Law." The State confirmed this offer of evidence in subsequent procedural opportunities granted for that purpose (*supra* Having Seen 13 and 18), indicating that Mr. Sisco Ricciardi "was co-author of the Code of Ethics for Venezuelan Judges" and requested that his statement be rendered at a public hearing.

29. In their brief of observations to the definitive list of deponents (*supra* Having Seen 22), the representatives filed a challenge against Mr. Sisco Ricciardi based on the grounds specified in Article 48(1)(c) of the Court's Rules of Procedure. The representatives argued that, "[b]eyond what is stated in his curriculum vitae, which shows that Mr. Sisco Ricciardi has always worked professionally as a public servant or as a lawyer at the service of the State, Mr. Sisco Ricciardi currently holds the position of Magistrate of the Court of Social Cassation of the Supreme Court of Justice" and provided documents

¹⁵ "Competitive processes and Credentials for Admission to the Judicial Profession" was added at the end of the object..

¹⁶ *Cf. Case of Mohamed v. Argentina*. Order of the President of the Court of June 4, 2012, Considering para. 52.

showing his appointment to that position. The representatives consider that “Mr. Sisco Ricciardi not only has close ties with the Venezuelan State, but is obviously in a position of subordination to the State.” They further argued that “the Venezuelan Judiciary is being called into question in this trial, and therefore it is unlikely that Mr. Sisco Ricciardi could act as an impartial expert witness in this case.”

30. In accordance with Article 48(3) of the Rules, Mr. Sisco Ricciardi was informed of the challenge filed against him by the representatives. In his observations, Mr. Sisco Ricciardi accepted that he has worked as a public servant since 1980 and “held several positions in the government.” He also admitted that he is “currently a Magistrate of the Supreme Court of Justice, in the Court of Social Cassation.” In this regard, Mr. Sisco Ricciardi explained that “the Constitution of the Bolivarian Republic of Venezuela, establishes an organic separation within the national public administration” and that “each [branch of government is] endowed with operational independence and autonomy.” Mr. Sisco Ricciardi said he considered that he “h [as] no impediment to carrying out the functions required of [him]”, “since there is no relationship of hierarchical dependence between [him] and the Venezuelan State; [he has] worked as a public official for many years, even before obtaining [his] law degree, and that [he is] trained to serve with objectivity, and also, h [as] knowledge of the disciplinary system for judges in Venezuela.” Mr. Sisco Ricciardi emphasized that “[his] current functions as a Magistrate of the Court of Social Cassation [do not allow him] to monitor or verify the performance of the bodies responsible for applying disciplinary measures to judges.”

31. The President recalls that, under Article 48(1) (c)¹⁷ of the Rules, an expert witness may be disqualified on the basis of two assumptions: that he or she has close ties with the proposing party and, in addition, when the Court considers that this relationship affects his or her impartiality.¹⁸ On previous occasions this Court has pointed out that the exercise of public office should not automatically be considered as an impediment to participate as an expert witness in an international proceeding before this Court,¹⁹ since it is necessary to determine whether the position held by the expert witness offered could affect his or her impartiality in rendering the expert opinion for which he or she was proposed.²⁰ Likewise, it is pertinent to recall that this Court has established that even

¹⁷ This rule states as grounds for disqualification that a witness “has, or has had, close ties with the proposing party, or is, or has been, a subordinate of the proposing party, and the Court considers that his or her impartiality may be affected.”

¹⁸ Cf. *Case of Díaz Peña v. Venezuela*. Order of the President of the Court of November 2, 2011, Considering para. 23; *Case of Néstor José and Luis Uzcategui et al. v. Venezuela*. Order of the President of the Court of November 3, 2011, Considering para. 23; *Case of Forneron and daughter v. Argentina*. Order of the President of the Court of September 13, 2011, Considering para. 14; *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*. Order of the President of the Court of August 6, 2012, Considering para. 19; *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20; and *Case of J v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 26

¹⁹ Cf. *Case of González et al. (“Cotton Field”) v. Mexico*. Order of the President of the Court of March 18, 2009, Considering para. 88; *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20; and *Case of J v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 26.

²⁰ Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 24; *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20; and *Case of J v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 26.

though the statement of an expert witness may contain elements that support the arguments of one of the parties, this *per se* does not disqualify the expert witness.²¹

32. It has been confirmed that Mr. Sisco Ricciardi has worked as a public servant for three decades and currently serves as a Magistrate of the Court of Social Cassation of the Supreme Court of Justice; there is no record that he has issued any decision or opinion in connection with this case in his capacity as a Judge. The President considers that, given the object of his expert opinion (*supra* Considering para. 28), there is no reason to consider that this link with the State would necessarily affect his impartiality in rendering an expert opinion in this case. Consequently, the President dismisses the challenge filed against the expert witness Octavio José Sisco Ricciardi.

33. Accordingly, the President considers it appropriate to admit the expert opinion Mr. Sisco Ricciardi, proposed by the State, and recalls that the value of his expert opinion shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. The object of said expert opinion and the manner in which it will be received shall be decided the operative section of this Order (*infra* Operative para. 5).

D) Challenge filed by the State against four expert witnesses proposed by the representatives

34. In their brief of pleadings and motions the representatives offered the expert opinions of Enrique Gimbernat Ordeig, Carlos Tiffer Sotomayor and Antonio Canova González and confirmed their offers of evidence in subsequent procedural opportunities granted for that purpose (*supra* Having Seen 4, 15 and 18). The President also admitted the request to substitute the expert opinion of Mr. Alberto Arteaga Sánchez with that of Mr. Jesús Ollarves Irazábal proposed by the representatives (*supra* Considering para. 22).

35. In its observations to the definitive list of deponents and to the request for substitution (*supra* Having Seen 24), the State objected to Messrs. Gimbernat Ordeig, Tiffer Sotomayor, Canova González and Ollarves Irazábal. Venezuela filed a challenge against Mr. Enrique Gimbernat based on the grounds set forth in Article 48(1) (f) of the Rules of the Court. The challenge against Mr. Canova González was based, in part, on Article 48(1)(c) of the Rules. With respect to the other two expert witnesses proposed, Venezuela questioned their impartiality without specifying any of the grounds contemplated in Article 48. Furthermore, the State explained its reasons for considering that "the grounds [for challenging expert witnesses] established [in Article 48 of the Rules of the Court] are very limited or restrictive" in terms of "determining the assumptions that could impair the impartiality of an expert witness," and that this affects the right to defense, to justice and the rights of Member States." Venezuela argued, *inter alia*, that "[said] Article concerning objections to expert witnesses was drafted in a restrictive manner, which prevents the parties from presenting before the Judges various facts or circumstances that would determine the partiality of the expert witnesses proposed in the cases." Therefore, Venezuela requested that the Court "consider and interpret the issue of the moral suitability of the expert witnesses proposed, interpreting its Rules holistically [, so that it] considers the provisions of Article 21 of the Rules of the Court, 'regarding the

²¹ Cf. *Case of Boyce et al. v. Barbados*. Order of the President of the Court of May 29, 2007, Considering para. 22; *Case of Reverón Trujillo v. Venezuela*, Order of the President of the Inter-American Court of Human Rights of September 24, 2008, Considering para. 34, and *Case Artavia Murillo et al. ("In vitro Fertilization") v. Costa Rica*. Order of the President of the Court of August 6, 2012, Considering para. 20.

impediments, recusals and disqualification of Judges´ to which Article 19(3) of the Statute refers.” The State also held that, according to a broader interpretation, “if a Judge may be removed from hearing a case, on certain specific ground, [one may] conclude that any expert witness may also be disqualified and excluded provided there is justified cause.”

36. In accordance with Article 48(3) of the Rules of the Court, Messrs. Gimbernat Ordeig, Tiffer Sotomayor, Canova González and Ollarves Irazábal were notified of the challenges filed against them by the State. All presented their observations and argued that their impartiality and objectivity were not affected.

37. Article 48 of the Court’s Rules of Procedure regulates matters concerning the “Challenge of expert witnesses.” Subparagraph 1 stipulates the grounds for disqualification in the following terms:

1. An expert witness may be disqualified based on the following grounds:
 - a. he or she is a relative by blood, affinity, or adoption, up to the fourth degree, of one of the alleged victims;
 - b. he or she is or has been a representative of one of the alleged victims in proceedings regarding the facts of the case before the Court, either at the domestic level or before the Inter-American System for the promotion and protection of human rights;
 - c. he or she currently has, or has had, close ties with the proposing party, or is, or has been, a subordinate of the proposing party, and the Court considers that his or her impartiality may be affected;
 - d. he or she is, or has been, an officer of the Inter-American Commission on Human Rights with knowledge of the contentious case in which his or her expert opinion is required;
 - e. he or she is or has been an Agent of the respondent State in the contentious case in which his or her expert opinion is required;
 - f. he or she has previously intervened, in any capacity and before any organ, whether national or international, in relation to the same case.

D.1) Challenge against Enrique Gimbernat Ordeig

38. Mr. Gimbernat Ordeig, a Spanish professor of Criminal Law, was proposed to render expert opinion on: a) “the universal principles that govern criminal proceedings and their judicial guarantees”; b) analysis of the “indictment formulated against professor Allan R. Brewer Carías by the Attorney General’s Office of Venezuela on January 27, 2005, [...]”; c) explanation of “whether t[he] proceeding [against Mr. Brewer Carías], violates one or several of the fundamental rights of the individual recognized by international human rights law, with particular reference to the rights to the presumption of innocence and to defense, [...]”; d) “the assessment of the evidence by the Attorney General’s Office whereby, first, it attributed to professor Brewer Carías the crime mentioned and subsequently accused him of the same crime.”

39. The State held that the grounds for disqualification stated in Article 48(f) of the Rules of the Court apply to Mr. Gimbernat, because “at the request of Allan Brewer Carías, he issued an opinion on the same matter on which he seeks to expound before this Court as an expert witness.” According to Venezuela, “during the admission stage before the

Inter-American Commission on Human Rights, [t]he alleged victim submitted a document for the case file in which professor Enrique Gimbernat issued an opinion on the indictment of the Venezuelan Attorney General's Office against him." The State provided a copy of said opinion.

40. In his observations (*supra* Having Seen 27), Mr. Enrique Gimbernat Ordeig requested that the objection be dismissed. He explained that, "more than a year before the case of [Mr. Brewer Carías] was brought to the attention of the C[ommission]", he sent Mr. Brewer Carías the "opinion [he] issued on September 21, 2005." Mr. Gimbernat stated that "the use that [Mr. Brewer Carías] has given [...] to [said] legal opinion [...] is not, and cannot be understood as [his] 'intervention' in [the proceeding before the Commission] or in any other proceeding." He added that, although said opinion was presented as an attachment to the complaint brought before the Commission, he was not proposed as an expert or expert witness before that body, nor did he act or intervene in that capacity before the Commission.

41. The case file of the instant case shows that Mr. Gimbernat Ordeig prepared an "Opinion", signed on September 21, 2005²², which analyzes matters that have been included in the object of the expert opinion proposed before this Court²³ (*supra* Considering para. 38).

42. The President takes note of Mr. Gimbernat Ordeig's comments, in the sense that he has not acted nor intervened directly or personally in relation to the case of Mr. Brewer Carías. However, bearing in mind that Mr. Gimbernat Ordeig was proposed before this Court to render an expert opinion based on his legal knowledge, it is appropriate to consider whether the grounds contemplated in Article 48(1) (f) of the Rules of the Court is applicable in this case. This Presidency has confirmed that Mr. Gimbernat Ordeig issued his legal opinion in response to a request from Mr. Brewer Carías and his defense lawyers in the criminal proceeding²⁴ and that he expressed his opinion on matters included in the object of the expert opinion proposed before this Court. It is particularly relevant that Mr. Gimbernat Ordeig's opinion was used or presented both in the domestic criminal proceeding and in the proceeding before the Inter-American Commission. At the domestic level, the opinion was cited as grounds for many of the legal arguments used by the defense in their "[r]esponse" to the prosecutor's charges for the crime of conspiracy in the criminal proceeding against Mr. Brewer Carías. In the proceeding before the Commission it was submitted on January 24, 2007 as Annex 17 of the complaint filed before that body.

43. The Court has held that it is important to avoid using expert witnesses who have previously intervened "in a legally significant capacity" in the defense of a person's

²² The last page of the copy of the report submitted as Annex 17 of the petition filed before the Inter-American Commission shows that it was signed in Madrid, on September 21, 2005, by Mr. Enrique Gimbernat Ordeig. In the copy of the opinion provided by Venezuela to this Court when challenging Mr. Gimbernat Ordeig, the last page shows that it was prepared in Madrid, on July 12, 2005, but is not signed.

²³ In the introductory part of this opinion Mr. Gimbernat Ordeig records that "[on] behalf of Dr. Allan Brewer-Carías [he is] requested to issue an opinion on whether the indictment formulated against him by the Prosecutor's Office, shown on page 234 and subs. of Exhibit XIII of File C-43, and in which Dr. Brewer is accused of the crime of conspiracy to violently change the Constitution, contemplated in Art. 144.2 CP, for having participated 'in the drafting and preparation' of the 'Constitutive Act of the Government of Democratic Transition and National Unity', violates one or several of the fundamental rights of the individual [...]"

²⁴ As stated in the introductory part of the opinion signed by Mr. Gimbernat Ordeig on September 21, 2005 (*supra* note 23) and on page 196 of the Book submitted as Annex 30 to the Merits Report, the publication consists of a copy of the "[a]nswer brief" of Mr. Brewer Carías' defense attorneys to the prosecutor's charges against him for the crime of conspiracy.

rights.²⁵ Accordingly, the President considers that, given the manner in which the aforesaid legal opinion issued in September 2005 by Mr. Gimbernat Ordeig was obtained, used and provided as evidence, it may be considered that this implied his intervention in “a legally significant capacity”, in support of the defense of Mr. Brewer Carías in the criminal case against him, and therefore it is reasonable to surmise that his impartiality could be affected.

44. Based on the foregoing considerations, the President admits the challenge filed by Venezuela against Mr. Enrique Gimbernat Ordeig, proposed as an expert witness by the representatives of the alleged victim.

D.2) Challenge against Mr. Canova González

45. Mr. Antonio Canova González, a Venezuelan professor of Constitutional and Administrative Law, was proposed by the representatives of the alleged victim to render expert opinion on “the legal system of the judiciary in Venezuela, and in particular on the Constitutional system, the legal system and the regimen resulting from the judicial emergency and the current legal system [,] and their conformity with the Constitution and with the requirements of professionalism, independence and impartiality, according to the standards of a democratic society and their relevance to the criminal proceeding against professor Brewer Carías, as well as other matters within his area of expertise.”

46. In challenging Mr. Canova González, the State questioned his impartiality, first, based on the fact that he has rendered statements in previous cases against Venezuela before this Court, “which makes him an expert witness whose job is to appear before the Inter-American Court [...] to discredit the Venezuelan State.” Secondly, Venezuela argued that the grounds for disqualification established in Article 48(1) (c) of the Rules apply because Mr. Canova González “has acted as legal representative in several cases with the proposed witness Leon Henrique Cottin, which is evidence of the ties of friendship between them, and which undoubtedly favors Allan Brewer Carías.” Venezuela also held that Mr. Canova González “has been a friend [of Mr. Brewer Carías] since 1998,” because he wrote a paper for the book “Third International Meeting on Administrative Law - Allan Brewer Carías” published that year and also “has a paper” in the book “Tribute to Allan Brewer Carías”, published in 2003.

47. In his observations (*supra* Having Seen 27), Mr. Canova González stated that there was no impediment to his appearance as an expert witness in this proceeding, because none of the grounds for disqualification and none of the assumptions for challenging expert witnesses contemplated in Article 48 of the Rules of the Court applied to him. He held that the State’s reasons for questioning his impartiality “are unfounded.” He added that he had acted “objectively and transparently” when summoned to testify as an expert witness before the Court on previous occasions. As to the grounds established in Article 48(1) (c) of the Rules, he explained that he “[h]as never been an associate of Leon Henrique Cottin, nor ha[s] he been a subordinate, but [has] acted as joint representative in specific legal proceedings based on the decision of the firms involved.” He added that none of those proceedings had any connection with Mr. Brewer Carías, “and even less so with this proceeding or with any of the domestic trials or proceedings that subsequently led to the complaint before the C[ommission].” As to the State’s arguments regarding the publications, Mr. Canova González explained that his role in the collective work prepared as a tribute to Allan Brewer Carías “was limited to submitting a paper authored by [him]

²⁵ Cf. *Case of Cabrera García and Montiel Florez v. United Mexican States*. Order issued by the Inter-American Court on August 25, 2010, Considering para. 10.

entitled: "The protection of constitutional rights in the Ibero-American countries", and that he was invited to collaborate by the coordinators and editors. He stated that he "do [es] not understand how this can imply that [he has] a close link with the alleged victim which could affect [his] impartiality." As to his publication in the book "Third International Meeting on Administrative Law -Allan Brewer Carías", he explained that this is a compilation of papers presented at an academic event organized by the Foundation for Studies on Administrative Law, to which he was invited by the coordinator and member of the foundation's Governing Board, and indicated that his paper discussed the suspension of effects of administrative acts.

48. First of all, the fact that Mr. Canova González has rendered expert opinions in other cases before this Court regarding the same State in no way affects his impartiality in rendering an expert statement in this case and is not related to any of the grounds for disqualification contemplated in the Rules. On a previous occasion, when Venezuela filed a challenge in another case using this same argument, the President indicated that according to the Rules, the fact that an expert witness may have rendered an expert opinion in previous cases before the Court does not constitute grounds for disqualification.²⁶

49. The court rulings provided by the State to prove the supposed "ties of friendship" between Mr. Canova González, a proposed expert witness, and Mr. Leon Henrique Cottin, who was Mr. Brewer Carías' defense lawyer in the domestic criminal proceeding and who has been proposed as a witness before this Court, show that both acted as the legal representatives of two firms in 2004 and that, in this capacity, they submitted joint briefs before the corresponding Courts in matters unconnected with the instant case. This type of professional relationship does not entail close links or a position of subordination, as required under Article 48(1) (c) (*supra* Considering para. 37). Also, based on Mr. Canova González' explanation regarding the nature of his contribution to the aforementioned academic publications, his participation has no connection whatsoever with the facts of this case. The situation described by the State does not denote close links or a subordinate relationship with the party proposing Mr. Canova González as an expert witness.

50. Based on the foregoing considerations, the President dismisses the challenge filed by Venezuela against Mr. Antonio Canova González, proposed as an expert witness by the representatives of the alleged victim, and admits his expert opinion. The value of said expert opinion shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. The object of this expert opinion and the manner in which it will be received shall be decided the operative section of this Order (*infra* Operative para. 1).

D.3) Challenge filed against Messrs. Tiffer Sotomayor and Ollarves Irazábal

51. Mr. Carlos Tiffer Sotomayor, a Costa Rican professor of Criminal Law and Criminology, was offered by the representatives of the alleged victim to render an expert opinion on the following subjects: a) "guarantees of due process for defendants during the different phases of the criminal proceeding in the adversarial system, particularly in the investigation phase of that proceeding"; b) "universal standards of independence and

²⁶ Cf. *Case of Néstor José and Luis Uzcategui et al. v. Venezuela*. Order of the President of the Court of November 3, 2011, Considering para. 23.

impartiality of judges and their specific application to the proceeding initiated against professor Allan R. Brewer Carías”; c) “the legal nature of amnesty, with particular reference to the principle of legality in criminal proceedings and the principle of equality before the law”; d) “the protection of the attorney-client relationship, especially regarding opinions issued in the context of a professional relationship”; e) “the issue of a legal opinion by a lawyer as the exercise of freedom of expression”; f) “reported violations of the right to freedom of expression of professor Brewer Carías”, and g) “other matters within his area of expertise.” Mr. Jesús Ollarves Irazábal, a Venezuelan professor of Criminal Law and Public International Law and Human Rights, was proposed by the representatives of the alleged victim to render expert opinion on: a) “the different phases of a criminal proceeding in Venezuela and its theoretical time frames, according to the General Criminal Procedural Code, and real time frames, according to forensic practice, particularly as regards the interval between the presentation of the charges and the holding of the preliminary hearing”; b) “whether, according to the Venezuelan legal system, the guarantees of due process enshrined in the Venezuelan Constitution and in the American Convention on Human Rights are enforceable during the different phases of a [criminal] proceeding, particularly the investigation”; c) “the role of the Attorney General’s Office and of the Supervising Judge in that proceeding”; d) “his opinion [...], from the perspective of the conduct of the criminal proceeding, on the stage at which the Judge must rule on requests or demands for absolute annulment of the court records of said proceeding, due to the violation of the defendant’s human rights”; e) “the nature and effects of the amnesty in Venezuela, according to the general legal system and its connection with Decree 5790, Special Amnesty with the Scope, Value and Force of Law (Official Gazette N° 5.870 Extra. of 31-12-2007””; and, f) “other matters within his area of expertise.”

52. With respect to Mr. Tiffer Sotomayor, the State argued that his “lack of impartiality” stems from “having reported on the situation of the Venezuelan Judicial System” in a report prepared by the International Bar Association in connection with the case of Judge María Lourdes Afiuni, and provided a copy of said report.

53. In his observations (*supra* Having Seen 27), Mr. Tiffer Sotomayor held that the challenge is inadmissible since “it is not based on any provision of the current Rules of the Court.” He also explained how the report mentioned by Venezuela was prepared and who had contributed to it, emphasizing that the topics analyzed therein “have no connection whatsoever with the object of [his] expert opinion in the proceeding [in the case of Mr. Brewer Carías].” He pointed out that “the case of Dr. Brewer Carías is not discussed or analyzed in any way in the IBA report, in which the undersigned participated.” He further stated that “the expert report which will be rendered before this Court has no direct or indirect connection with any of the topics addressed in the aforementioned report [...], for which reason there is no prejudgment whatsoever of the object of the expert report to be rendered before the Inter-American Court.”

54. As to the challenge against Mr. Ollarves Irazábal, Venezuela held that his “lack of [im]partiality stems from having been a witness in a previous case before this Court against Venezuela, in which “he expressed a clear negative position against the Venezuelan Judicial System.” This was also reflected in his views expressed on the subject of impunity at a forum on “Decentralization and Public Security”, which were cited in an article by another author published in March 2010 on the web page of soberania.org. According to Venezuela, Mr. Ollarves Irazábal’s comments reflect “a strong partiality and critical view of the Venezuelan State, which are not consistent with the objective criteria required of auxiliaries of the justice system and in this particular case.” The State also argued that “the links” between Mr. Ollarves Irazábal and the alleged victim are proven

because in 2003 he published an article in the book of Studies produced as a tribute to professor Allan Brewer Carías. Venezuela further argued that, as a “fundamental point” which demonstrates his lack of impartiality, Mr. Ollarves Irazábal was dismissed from the Judiciary due to a disciplinary sanction imposed on him for abuse of authority in relation to the way in which he ruled on a challenge filed against all the members of a particular Court and the disqualification of one of them.

55. In his observations, Mr. Ollarves Irazábal held that “[his] theoretical competence as an expert witness is not affected under any circumstance” and that “questioning [his] supposed partiality as an expert witness is based on circumstances that are not contemplated in Article 48 of the Rules of the Court.” He stated that he has no links of any kind with Mr. Brewer Carías. He explained that he contributed to a book prepared as a tribute to Mr. Brewer Carías because all the professors of the law faculty of the Central University of Venezuela were invited to do so. Finally, he held that his impartiality in this case is in no way affected by “the fact that [he] acted as a witness in a previous case which is unrelated to this one, that [he] contributed to a tribute book, or that [he has] exercised the right to express [his] opinion in a forum on Decentralization and Public Security, which professor Brewer did not promote, organize or participate in.”

56. The President points out that the State did not explain how the situations alleged for challenging Messrs. Tiffer Sotomayor and Ollarves Irazábal were included in any of the grounds for disqualifying expert witnesses stipulated in Article 48(1) of the Rules of the Court (*supra* Considering para. 37). Nevertheless, both individuals proposed as expert witnesses presented briefs before this Court explaining those situations and affirming that their impartiality and objectivity are not affected for the purposes of rendering an expert opinion in the instant case.

57. As to Mr. Ollarves Irazábal’s alleged contribution to a publication produced as a tribute to Mr. Brewer Carías, the President considers that the manner in which he participated does not demonstrate any link with the alleged victim in this case. Likewise, the President considers that the other situations alleged by the State regarding Messrs. Tiffer Sotomayor and Ollarves Irazábal are not contemplated in the grounds for challenging expert witnesses stipulated in Article 48(1) of the Rules of the Court.

58. Consequently, the President dismisses the challenges filed by Venezuela against Messrs. Carlos Tiffer Sotomayor and Jesús Ollarves Irazábal, proposed as expert witnesses by the representatives of the alleged victim, and admits their expert opinions. The value of such expert opinions shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. The objects of these expert opinions and the manner in which they will be received shall be decided the operative section of this Order (*infra* Operative paras. 1 and 5).

E) Objections by the representatives to the admissibility of six witness statements offered by the State

59. In this section the representatives’ objection to the admissibility of the statement Mr. Arcadio Delgado Rosales will not be considered, given that his substitution for the witness Luis Fernando Damiani Bustillos was accepted (*supra* Considering para. 27) and the representatives did not submit any objections to this request for substitution, or to the testimony of Luis Fernando Damiani Bustillos.

E.1) Objections to the admissibility of the testimonies of Julián Isaías Rodríguez, Gonzalo Gómez Freite and Ángel Palacios

60. The State proposed Messrs. Julian Isaías Rodríguez, Gonzalo Gómez Freite and Ángel Palacios as witnesses. The representatives objected to the admission of their statements arguing that these refer to “facts that, clearly, are not the subject of debate in this proceeding.” The representatives argued that “it is manifestly impertinent of the State to propose evidence exclusively related to the events of April 11, 2002.” They pointed out that “[w]hile the political crisis that occurred in Venezuela in April 2002 and that led to the unconstitutional, though brief, overthrow of President Hugo Chávez Frías, constitutes the context that served as a pretext for the unlawful violation of the rights of Professor Brewer Carías, it is not the issue under consideration.”

61. Mr. Julián Isaías Rodríguez, Attorney General of the Republic in 2002, was proposed to testify on “the events that led to the Coup d’ Etat of April 11, 2002, and the drafting of the ‘Decree of Democratic Transition and National Unity’.” Mr. Gonzalo Gómez Freite, a journalist, was offered to testify on “the events that occurred on April 11, 12 and 13, 2002[, a]nd, the role of the alternative community-based media, due to the information blackout in the media.” Mr. Ángel Palacios, an audiovisual and documentary producer, was proposed to refer to “the events of April 11, 12 and 13, 2002.”

62. From the objects of the statements of three witnesses proposed it is clear that these refer to alleged facts that may be considered related to the “Background” described by the Commission in the chapter on “Findings of fact” (Chapter IV.A) of its Report on Merits No. 171/11. The President considers it necessary to recall that it is up to the Court, at the appropriate procedural moment, to determine the context and facts of this case, together with the legal consequences arising from these, after considering the arguments of the parties and assessing the evidence presented, according to the rules of sound judgment.²⁷ The observations and objections of the representatives in relation to certain arguments and evidence offered by the State, shall be duly assessed by the Court.

63. Therefore, as on previous occasions,²⁸ the President considers that this is not the appropriate procedural stage to take the decision to exclude evidence used by the State to contextualize or define the facts and claims presented by the Commission and the representatives. Thus, for the proper conduct of the proceeding, the President shall require any evidence that could, in principle, be relevant, having regard to the arguments put forward by parties and what they seek to prove, without this implying a decision or a prejudgment as to the possible merits of the case. The evidence and arguments that form part of the State’s position in this proceeding shall be considered and assessed by the Court in due course.²⁹ Nevertheless, this Presidency recalls that any questions asked of

²⁷ Cf. *Case of Cepeda Vargas v. Colombia*. Order of the President of the Court of December 22, 2009, Considering para. 14; *Case González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 17; *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 25, and *Case of J. v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 17.

²⁸ Cf. *Case of Gelman V. Uruguay*. Order of the President of the Court of September 23, 2010, Having Seen 2, Considering para. 6; *Case of Contreras et al. v. El Salvador*. Order of the President of the Court of April 14, 2011, Considering paras. 16 to 18; *Case González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 17; *Case Artavia Murillo et al. (“Fertilization in vitro”)* v. *Costa Rica*. Order of the President of the Court of August 6, 2012, Considering paras. 6 and 7, and *Case J. v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 45.

²⁹ Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 17, and *Case of J. v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 45.

those witnesses must take into account the sphere of competence of the Inter-American Court, which is not a criminal Court and which, if it were to examine the merits of the case, would have to decide whether or not the State is responsible for violating the human rights of Mr. Brewer Carías, the alleged victim in the case before this Court.

64. Based on the foregoing, the President admits the statements of Julián Isaías Rodríguez, Gonzalo Gómez Freite and Ángel Palacios, proposed by the State at the proper procedural stage. The value of such statements shall be assessed in due course, within the context of the existing body of evidence and according to the rules of sound judgment. The object of these statements and the manner in which they shall be received will be decided in the operative section of this Order (*infra* Operative paras. 1 and 5).

E.2) Objections to the admissibility of the testimonies of Santa Palella Stracuzzi, Néstor Castellanos and Mercedes Prieto

65. The State proposed Mrs. Santa Palella Stracuzzi, Mr. Néstor Castellanos and Mrs. Mercedes Prieto as witnesses. Mrs. Santa Palella Stracuzzi, Director of the National School of Prosecutors since 2010,³⁰ was offered to render a statement on “the System for the Selection and Training of Prosecutors in the Bolivarian Republic of Venezuela.” Mr. Néstor Castellanos, First Prosecutor of the Court of Cassation and the Constitutional Chamber of the Supreme Court of Justice, who also served as the Fifth Judge of First Instance in a Supervising role in the Judicial District of the State Zulia³¹, was proposed to render a statement on “the stages of the Venezuelan Criminal proceeding and the remedies available to persons for their defense.” Mrs. Mercedes Prieto, a lawyer and the Director General of Legal Aid at the Attorney General’s Office, appointed by the Attorney General of the Republic to hear the case of Mr. Allan Brewer Carías³², was proposed to render a statement on “[t]he Venezuelan criminal proceeding against the lawyer Allan Brewer Carías [; t]he current status of the case, and the domestic remedies applied before the Attorney General’s Office and those that may be applied before the criminal Courts.”

66. The representatives objected to the admission of those three statements arguing that the deponents were offered “because they supposedly hold specific positions in the Venezuelan government structure,” though the State “does not [...] even mention the records of their appointment to such positions or their publication in the Official Gazette.”³³ With regard to Mr. Néstor Castellanos and Mrs. Mercedes Prieto, the representatives also argued that their statements should not be admitted “either as alleged witnesses, or as expert witnesses or experts”, given that, “according to the content of their statements, they would be acting as expert witnesses and not as witnesses,” which means that they would be “expert witnesses disguised as witnesses.” According to the representatives, the State offered them as witnesses because it could not offer them as expert witnesses, since they would have an impediment. Moreover, the representatives “challenge [d]” Mr. Castellanos and Mrs. Prieto as expert witnesses in this case.

³⁰ As affirmed by the State in its answer brief, in its definitive list of deponents and in its brief confirming the information contained in the definitive list of deponents.

³¹ As affirmed by the State in its answer brief, in its definitive list of deponents and in its brief confirming the information contained in the definitive list of deponents.

³² As affirmed by the State in its answer brief, in its definitive list of deponents and in its brief confirming the information contained in the definitive list of deponents.

³³ In the brief of the representatives this phrase in quotation marks is underlined

67. The President confirms that upon offering these three witness statements, the State specified the public position held by each of the deponents, which appears to be relevant to the way in which they would have been informed about the facts that are known to them.

68. The President points out that, in calling for the inadmissibility of the three statements, the representatives have not questioned the fact that the individuals proposed as witnesses hold the positions indicated by the State, but rather they consider that the State should have provided more precise information or proof of the public office held by the proposed deponents. The President considers that this objection is not a matter that concerns the admissibility of the evidence. Article 41(1)(c) of the Rules of the Court stipulates that in its answer brief the State must specify “the identity of the deponents offered and the object of their statements” and that, “[e]xpert witnesses must also submit their *curricula vitae* and contact information.” According to the Rules of the Court, the requirements for offering testimonial evidence are less rigorous than those required to offer expert evidence and the Court has not interpreted that it is a duty of the party proposing the testimony to attest to the job or position held by the person. Should the representatives have any questions or observations to make regarding the positions of those witnesses and their relevance in terms of obtaining knowledge of the facts that are the object of their testimony, they may do so by exercising their right to question them and to submit their observations on the evidence, in accordance with Article 50 subparagraphs 5 and 6 and in Article 51 subparagraphs 2 and 3. The Court shall take these questions into account in its eventual assessment of the evidence.³⁴

69. As to the representatives’ objection that the deponents Néstor Castellanos and Mercedes Prieto are “expert witnesses disguised as witnesses,” this Presidency considers that the objects of their statements have not been proposed in a manner that warrants the inadmissibility of the evidence, given that these deponents are not required to issue a specialized opinion or technical assessment on the compatibility of the system for the selection and training of Prosecutors and of the Venezuelan criminal proceeding and its recursive system, respectively, with international standards on those matters.

70. However, the President takes note of the representatives’ arguments to recall that any questions submitted to those deponents must be consistent with the nature of the testimony and that they must limit themselves to testifying on facts and circumstances that are known to them in their capacity as witnesses.³⁵

71. Finally, the President notes that, in the brief confirming the information offered in the definitive list of deponents, the State added some elements to the object of the witness statement of Mrs. Santa Palella Stracuzzi.³⁶ The representatives did not submit observations in that regard. This Presidency considers that this change does not constitute a substantial modification or extension of the object, but rather it specifies in greater detail the object originally proposed in the answer brief.

72. Based on the foregoing considerations, this Presidency admits the witness statements of Santa Palella Stracuzzi, Néstor Castellanos and Mercedes Prieto, proposed

³⁴ Cf. *Case of the Massacre of Santo Domingo v. Colombia*. Order of the President of the Inter-American Court of June 5, 2012, Considering para. 16.

³⁵ Cf. *Case of Norin Catriman et al. (Lonkos, leaders and activists of the Mapuche Indigenous People) v. Chile*. Order of the President, April 30, 2013, Considering paras. 23 a 25.

³⁶ “Public Contest for Admission to the Prosecutor’s Profession. Continuous Training Program for Prosecutors of the Attorney General’s Office” was added.

by the State, which shall be limited to the facts and circumstances which they can confirm or that are known to them in their capacity as witnesses. The value of such statements shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. The object of these statements and the manner in which they shall be received will be decided in the operative section of this Order (*infra* Operative paras. 1 and 5).

73. It is unnecessary to refer to the challenge against Mr. Néstor Castellanos and Mrs. Mercedes Prieto, since these deponents have been admitted as witnesses, as proposed.

F) Objections by the State to two witness statements offered by the representatives

74. The representatives offered the witness statements of Leon Henrique Cottin and José Rafael Odreman Lezama, to refer to “the [alleged] violations of due process suffered by professor Brewer Carías.” In the definitive list of deponents and in their confirmation brief (*supra* Having Seen 15 and 18), the representatives stated that they consider that Mr. Leon Henrique Cottin should be summoned to testify at the public hearing and that Mr. José Rafael Odreman Lezama could render his statement by affidavit. They added that, “in the event that the lawyer Leon Henrique Cottin is unable to appear at the hearing in this case, they propose, alternatively, that the testimony of the lawyer Odreman be received at the hearing.”

75. The State objected to those testimonies, arguing that the representatives “contradict [themselves...] by offering two witnesses who will discuss exactly the same points.” It also objected to the representatives’ request that if Mr. Cottin was unable to appear at the hearing, then Mr. Odreman Lezama should do so. Venezuela considers that this would imply “duplicating the procedural steps”, since Mr. Odreman’s affidavit would be presented prior to the hearing; therefore, “if Mr. Odreman has already submitted his testimony in writing, he could hardly attend the hearing to discuss what he already stated in the written document.” The State considers that this constitutes an illegal substitution of witnesses in the event of the absence of one of them on the day of the hearing, which would infringe “the principle of procedural economy and the preclusion of actions.”

76. This Presidency has confirmed that both witnesses were indeed offered to testify on the same object because of their knowledge of the facts, given that both acted as defense lawyers for Mr. Brewer Carías in the domestic criminal proceeding. The President deems it appropriate to admit both testimonies, bearing in mind that these refer directly to facts disputed in the instant case, rendering them necessary and justifying the receipt of further evidence.

77. Consequently, the representatives’ request to authorize Mr. Odreman to render a statement at the hearing in the event that Mr. Leon Henrique Cottin is unable to appear, is inadmissible. In the event of an exceptional situation arising that would make it necessary to request the substitution Mr. Cottin, the representatives may proceed in accordance with the provisions of Article 49 of the Court’s Rules of Procedure.

78. The President deems it appropriate to admit the witness statements of Leon Henrique Cottin and José Rafael Odreman Lezama, proposed by the representatives of the alleged victim. The value of such statements shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound

judgment. The object of these statements and the manner in which they will be received shall be decided the operative section of this Order (*infra* Operative paras. 1 and 5).

G) Challenge by the State to the expert witness proposed by the Commission

79. The Inter-American Commission offered the expert opinion of José Jonathan Zeitune, on “international standards applicable to the effects of the provisional appointment of judges and prosecutors in relation to the principle of judicial independence, due process and judicial guarantees for persons subject to a criminal proceeding, particularly in the context of a criminal complaint in which matters with a [supposed] political content are debated.”

80. The State challenged Mr. Zeitune, arguing that he is “an expert witness by profession,” because “whenever a case is brought against Venezuela in the Inter-American Court of Human Rights related to the independence of the Judiciary in Venezuela, he is proposed by the Commission.” The State pointed out that Mr. Zeitune has rendered an expert opinion in the cases Reverón Trujillo, Chocrón Chocrón and Díaz Peña, in which “he has shown his dissatisfaction with the Venezuelan Judicial System, demonstrating his predisposition against the Venezuelan State.”

81. In accordance with Article 48(3) of the Rules of the Court, Mr. Zeitune was informed of the challenge filed against him by the State (*supra* Having Seen 26). In his observations (*supra* Having Seen 27), Mr. Zeitune considered that he “compl [ies] with the requirements of impartiality and [has] no family ties or personal connection with the alleged victim or interest in the particular case.” He affirmed that “there is no link of any kind, personal or professional, with the alleged victim or with any of the members of the Inter-American Commission on Human Rights.” He argued that in previous cases against Venezuela in which he acted as an expert witness “[his] participation was limited to a presentation on international standards related to the cases in question, without any connection to any of the alleged victims.” Mr. Zeitune further indicated that he has “never participated, either at national or international level, in any proceeding related to [Mr.] Brewer Carías.”

82. The President notes that the State did not base its challenge on any of the grounds for disqualification of expert witnesses established in Article 48(1) of the Court’s Rules of Procedure. Furthermore, he reiterates that the Rules do not establish as grounds for disqualification the fact that an expert witness has rendered an expert opinion in previous cases brought before the Court (*supra* Considering para. 48). Even though it may be argued that this is based on the supposed provisions of Article 48(1) (c) of the Rules, the President recalls that, according to said Article, an expert witness may only be disqualified on the basis of the following two assumptions: that he or she has close ties with the proposing party and, in addition, when the Court considers that this relationship affects his or her impartiality (*supra* Considering para. 31).³⁷ In this regard, the State has not demonstrated the alleged close ties or subordinate position of the proposed expert witness with the Inter-American Commission. Moreover, the fact of having rendered an expert opinion in previous cases before the Court does not imply, in any way, the existence of “close ties or being a subordinate of the proposing party.” Indeed, rendering an expert opinion in previous cases before the Court does not imply that the expert witness is

³⁷ *Supra* note 18.

subordinate to, or is under the command or dominion of, either the Commission or the representatives, or that a relationship of dependence exists between him and the Commission.³⁸ Thus, the central element of close ties specified in the regulatory provision does not apply.

83. Based on the foregoing reasons, and pursuant to Article 48(1) of the Rules of the Court, the President dismisses the State's objection to Mr. José Jonathan Zeitune, proposed as an expert witness by the Inter-American Commission.

H) Admissibility of the expert opinion offered by the Commission

84. Article 35(1)(f) of the Rules provides for the "possible appointment of expert witnesses" by the Inter-American Commission, with due justification of the grounds and object of such appointment "when the inter-American public order of human rights is affected in a significant manner." The implication of this provision is that the appointment of expert witnesses by the Commission is an exceptional circumstance, subject to that requirement, which is not satisfied by the mere fact that the evidence to be produced is related to an alleged human rights violation. The "inter-American public order of human rights" must be "affected in a significant manner", and it is up to the Commission to justify that situation.³⁹ This Presidency has understood that, to comply with said regulatory requirement, the object of the expert opinion proposed by the Commission must not be limited to the situation or legal system of the country in question and must transcend the specific facts of the case before the Court, as well as the specific interests of the parties in litigation.⁴⁰

85. As to the possible connection between the object of Mr. José Zeitune's expert opinion (*supra* Considering para. 79) and the inter-American public order, the Commission considers that "it would contribute to the analysis of the effects of provisional justice on the right to judicial independence, from a perspective that has not yet been explored in the Court's jurisprudence." It added that, although the Court has referred to provisional justice, this case provides an opportunity to analyze this situation "as to the specific effects on the right to due process, specifically to an independent judge [,] of a person subject to a criminal proceeding."

86. The President considers that the object of Mr. Zeitune's expert opinion is relevant to the inter-American public order because it involves an analysis of international standards on judicial independence, particularly those related to the stability of the position, from the perspective of the defendant's rights in a criminal proceeding to the guarantees of due process and judicial protection. Thus, the object of the expert opinion

³⁸ Cf. *Case of Forneron and Daughter v. Argentina*. Order of the President of the Inter-American Court of Human Rights of September 13, 2011, Considering para. 14; *Case of Díaz Peña v. Venezuela*. Order of the President of the Court of November 2, 2011, Considering para. 23, and *Case Néstor José and Luis Uzcategui et al. v. Venezuela* Order of the President of the Court of November 3, 2011, Considering para. 23.

³⁹ Cf. *Case of Vera Vera et al. v. Ecuador*. Order of the President of the Court of December 23, 2010, Considering para. 9, and *Case of Camba Campos et al. v. Ecuador*. Order of the President of the Court of February 15, 2013, Considering para. 11.

⁴⁰ Cf. *Case of Mohamed v. Argentina*. Order of the President of the Court of June 4, 2012, Considering para. 37, and *Case Norin Catriman et al. (Lonkos, leaders and activists of the of the Mapuche Indigenous People) V. Chile*. Order of the President of the Court of April 30, 2013, Considering para. 26.

transcends the issue in dispute in this case and refers to concepts that are relevant to other States Parties to the Convention.

1) Request by the Commission to submit questions to three expert witnesses offered by the representatives

87. In its observations to the definitive lists, the Commission requested “the opportunity to formulate verbal or written questions, insofar as these are relevant and reasonable,” to Messrs. Alberto Arteaga Sánchez, Antonio Canova González and Rafael Chavero Gazdik, proposed by the representatives of the alleged victim. The Commission stated, *inter alia*, that those expert opinions “are directly related to matters of inter-American public order identified by the Commission and to the object of the expert opinion to be rendered by the expert José Zeitune.”

88. The President recalls that he admitted the request to substitute the expert opinion Alberto Arteaga Sánchez with that of Jesús Ollarves Irazábal (*supra* Considering para. 22) and that he considered inadmissible the request to substitute the expert opinion of Rafael Chavero with that of Domingo García Belaúnde (*supra* Considering para. 23). This affects the analysis of the Commission’s request to submit questions.

89. Regarding the Commission’s request, the President recalls the provisions of the Court’s Rules of Procedure regarding the reception of statements proposed by the Commission, and in relation to its authority to question the deponents offered by the other parties.⁴¹ In particular, it is pertinent to recall that Article 50(5) of the Rules of the Court establishes that “[...]alleged victims or their representatives, the respondent State and, if applicable, the petitioning State, may formulate questions in writing for the deponents offered by the opposing party and, if applicable, by the Commission, who have been summoned by the Court to render their statements through affidavits.” This provision should be read in conjunction with Article 52(3) of the Rules, which makes provision for the Commission to question expert witnesses presented by the parties, “if authorized by the Court upon receiving a well-founded request therefor, when the inter-American public order of human rights is affected in a significant manner and the statement in question concerns a topic included in the statement of an expert witness offered by the Commission.” Thus, it is up to the Commission to demonstrate, in each case, the connection both with the inter-American public order and with the subject matter of the expert opinion it has offered, so that the Court or its President may consider the request in due course, and, if appropriate, authorize the Commission to ask its questions.⁴²

90. The President has determined that the object of the expert opinion proposed by the Commission concerns the inter-American public order inasmuch as it involves the analysis of international standards on judicial independence, particularly those related to the stability of the position, from the standpoint of its impact on the rights of the defendant in a criminal proceeding to the guarantees of due process and judicial protection (*supra* Considering para. 86). The President has confirmed that the expert opinions of Jesús

⁴¹ Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 48, and *Case of Camba Campos et al. V. Ecuador*. Order of the President of the Court of February 15, 2013, Considering para. 36.

⁴² Cf. *Case of Contreras et al. v. El Salvador*. Order of the President of the Court of April 14, 2011, Considering para. 25, and *Case Camba Campos et al. v. Ecuador*. Order of the President of the Court of February 15, 2013, Considering para. 36.

Ollarves Irazábal and Antonio Canova González, proposed by the representatives, basically refer to the situation and legal system of Venezuela.

91. Therefore, having regard to Articles 50(5) and 52(3) of the Rules, the request of the Commission to formulate questions to the expert witnesses Jesús Ollarves Irazábal and Antonio Canova González is not admissible.

J) Request by the Commission to transfer five statements rendered in the context of other cases against Venezuela

92. In its brief presenting the case (*supra* Having Seen 1), the Commission requested, "according to Article 35(1)(f) of the Rules of the Inter-American Court, [...] the transfer, where pertinent, of the statements of Antonio Canova González, in the case *Chocrón Chocrón v. Venezuela*, José Luis Tamayo Rodríguez and Alberto Arteaga Sánchez, in the case of *Reverón Trujillo v. Venezuela*, and Param Cumaraswamy and Jesús María Casal Hernández, in the case of *Apitz Barbera et al. ("First Court of Contentious Administrative Matters") v. Venezuela*, who referred to matters of public order [addressed in this case]." Messrs. Antonio Canova González and Alberto Arteaga Sánchez, who rendered expert opinions in those cases, were subsequently offered as expert witnesses in this case by the representatives in their brief of pleadings and motions (*supra* Having Seen 2). In the definitive list of deponents and in the brief of confirmation (*supra* Having Seen 15 and 18), the Commission made no reference to the request to transfer statements. In its observations to the definitive lists, the Commission requested permission to submit questions to the expert witnesses Antonio Canova González and Alberto Arteaga Sánchez (*supra* Having Seen 23), but without making any mention of the request to transfer the statements that both had rendered in the cases of *Chocrón Chocrón* and *Reverón Trujillo*.

93. In its observations to the definitive lists of deponents, the State indicated that "the Commission did not ratify the transfer of [the aforementioned five] statements," and therefore it considers that "this Court should declare that this motion has been withdrawn, in accordance with [Article] 46 of the Rules of the Court".

94. Given that when statements and expert opinions rendered in other cases are transferred to the file of a case being heard they have the character of documentary evidence, since they are not received under the adversarial principle and right to defense because the opposing party cannot ask questions, neither the Commission nor the party requesting such transfer has been asked to confirm these in their definitive lists of deponents.⁴³

95. In this case, the President deems it appropriate to decide, once the expert opinions required in this Order have been received, whether it is useful and necessary to transfer one or several of the aforesaid statements rendered in other cases against Venezuela, granting the parties an opportunity to present observations. Given that the expert opinion of Antonio Canova González (*supra* Considering para. 50) has been accepted in this Order, it is unnecessary to consider the transfer of his expert opinion rendered in the case *Chocrón Chocrón v. Venezuela*.

⁴³ Cf. *Case of J v. Peru*. Order of the Acting President of the Court of April 16, 2013, Considering para. 46; *Case of the Pacheco Tineo Family v. Bolivia*, Order of February 19, 2013 of the President of the Court, Considering para. 54.

K) Manner in which the statements and expert opinions will be received

96. It is necessary to ensure knowledge of the truth and the most complete presentation of the facts and arguments by the parties, insofar as these are pertinent to resolving the matters in dispute, guaranteeing both the parties' right to defend their respective positions and the Court's possibility of adequately examining the cases submitted to its consideration, bearing in mind that their number has grown considerably and is increasing constantly. It is also necessary to guarantee a reasonable term in the length of the proceeding, as required for effective access to justice. Accordingly, it is essential to receive the greatest possible number of testimonies and expert opinions through affidavits, and that the Court hear those alleged victims, witnesses and expert witnesses whose direct testimony is truly indispensable at a public hearing, taking into account the circumstances of the case and the object of the testimonies and expert opinions.

K.1) Statements and expert opinions to be rendered by affidavit

97. Bearing in mind the provisions of Article 50(1) of the Rules, the indications of the Commission, the representatives and the State in their definitive lists of deponents and in their complementary briefs (*supra* Having Seen 13, 15 and 18), the object of the statements offered, as well as the principle of procedural economy, the President deems it appropriate to receive, through affidavits rendered before a notary public, the statements specified in Operative Paragraph 1 of this Order.

98. The President recalls that Article 50(5) of the Rules of the Court contemplates the possibility that alleged victims or their representatives and the State may submit a list of questions for deponents who have been summoned to render their statements through affidavits. In application of this provision, the President proceeds to grant an opportunity for representatives of the alleged victim and the State to submit, if they so wish, any questions they consider pertinent to the deponents and the expert witnesses mentioned in Operative Paragraph 1 of this Order. In rendering their statements by affidavit, the deponents shall answer those questions, unless the President decides otherwise. The statements and expert opinions shall be transmitted to the Commission, the State and the representatives. In turn, the State and the representatives may submit any observations considered pertinent within the terms specified below, in Operative Paragraphs 2, 3 and 4 of this Order. The Court shall assess the evidentiary value of these statements in due course, taking into account the points of view, as appropriate, expressed by the State and the representative's parties in exercise of their right to defense.

K.2) Statements and expert opinions to be received at a public hearing

99. Given that the Court records in the instant case are ready for the opening of the oral proceedings on the preliminary objection and possible merits, reparations and costs, the President deems it appropriate to convene a public hearing to receive: the witness statement of the alleged victim Allan Randolph Brewer Carías, proposed by his representatives; the witness statement of Leon Enrique Cottin, proposed by the representatives; the witness statements of Julián Isaías Rodríguez, Ángel Alberto Bellorín, Néstor Castellanos and Mercedes Prieto, proposed by the State; the expert opinion of Jesús Ollarves Irazábal, proposed by the representatives, and the expert report of Octavio José Sisco Ricciardi, proposed by the State.

L) Final oral and written arguments and observations

100. The representatives and the State may submit to the Court their final oral arguments regarding the preliminary objection and possible merits, reparations and costs in this case, respectively, once the statements and expert opinions have been presented. As established in Article 51(8) of the Rules, once the arguments have concluded, the Inter-American Commission shall present its final oral observations.

101. According to Article 56 of the Rules, the alleged victims or their representatives, the State and the Commission may submit their final written arguments and final written observations respectively, in relation to the preliminary objection, and possible merits, reparations and costs, within the term established in Operative Paragraph 12 of this Order.

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, 31(2), 35(1), 40(2), 41(1), 45, 46, 50 to 56, 58 and 60 of its Rules of Procedure,

DECIDES:

1. To require, for the reasons set forth in this Order (*supra* Considering Paragraphs 97 and 98), in accordance with the principle of procedural economy and in exercise of the authority granted under Article 50(1) of the Court's Rules of Procedure, the following persons to render their statements by affidavit:

WITNESSES

A) Proposed by the representatives:

1. *José Rafael Odreman Lezama*, defense attorney of Mr. Brewer Carías in the domestic criminal proceeding, who will testify on "the [alleged] violations of due process which professor Brewer Carías [allegedly] suffered during said proceeding."

B) Proposed by the State :

2. *Luis Fernando Damiani Bustillos*, Masters degree in Law and Sociology, who will testify on "[t]he System for the Selection, Certification and Training of Venezuelan Judges. Competitive Process and Credentials for Admission to the Judicial Profession."
3. *Gonzalo Gómez Freite*, a journalist, who will testify on "the [alleged] events of April 11, 12 and 13, 2002[, a]nd the role of alternative community-based media, due to the [alleged] information 'blackout' in the media."

4. *Ángel Palacios*, an audiovisual and documentary producer, who will testify on "the [alleged] events of April 11, 12 and 13, 2002."
5. *Santa Palella Stracuzzi*, Director of the National School of Prosecutors since 2010, who will testify on "the System for the Selection and Training of Prosecutors in the Bolivarian Republic of Venezuela. Competitive Process for Admission to the Judicial Profession. Continuous Training Program for Prosecutors of the Attorney General's Office."

EXPERT WITNESSES:

A) Proposed by the Inter-American Commission

1. *José Jonathan Zeitune*, a lawyer specializing in Public International Law with experience in issues related to judicial independence, who will render an expert opinion on "international standards applicable to the effects of the provisional appointment of judges and prosecutors in relation to the principle of judicial independence, due process and judicial guarantees of persons subject to criminal proceedings, particularly in the context of a criminal complaint in which matters with a [supposed] political content are debated."

B) Proposed by the representatives:

2. *Antonio Canova González*, Professor of Constitutional and Administrative Law at the Central University of Venezuela and at the Andrés Bello Catholic University of Caracas, who will render an expert opinion on: "the legal system of the judicial profession in Venezuela, in particular on the Constitutional system, the legal system, the regimen resulting from the judicial emergency and the current legal system[;] its conformity with the Constitution and with the requirements of professionalism, independence and impartiality according to the standards of a democratic society and its relevance to the criminal proceeding against professor Brewer Carías."
3. *Carlos Tiffer Sotomayor*, Professor of Criminal Law of the University of Costa Rica and of Criminology at the *Universidad Estatal de Estudios a Distancia* of Costa Rica, to render an opinion on: a) "[the] guarantees due to the defendant during the different phases of the criminal proceeding in the adversarial system, particularly the investigation phase of that process"; b) "universal standards of independence and impartiality of judges and their specific application to the proceeding initiated against professor Allan R. Brewer Carías"; c) "the juridical nature of amnesty, with particular reference to the principles of criminal legality and equality before the law"; d) "the protection of the attorney-client relationship, especially regarding opinions issued in the context of a professional relationship"; e) "a legal opinion issued by a lawyer as an exercise in freedom of expression"; and f) "reported violations of the right to freedom of expression of professor Brewer Carías."

2. To require the representatives and the State to submit, if they consider it pertinent and within a non-renewable term that expires on August 12, 2013, any questions deemed pertinent through the Inter-American Court to the deponents specified in Operative Paragraph 1 of this Order. The statements and expert opinions required in the preceding Operative Paragraph shall be presented no later than August 28, 2013.

3. To require the representatives and the State coordinate and make the necessary arrangements so that, once the respective questions indicated in Operative Paragraph 2, the deponents and the expert witnesses may include the respective answers in their statements rendered by affidavit, under the terms of Considering Paragraph 98 of this Order.

4. To require the Secretariat of the Court, once the statements and expert opinions required in Operative Paragraph 1 have been received, to transmit them to the parties and to the Commission so that they may submit their observations, in accordance with Considering Paragraph 98, no later than with their final written arguments and observations.

5. To summon the representatives, the Bolivarian Republic of Venezuela and the Inter-American Commission on Human Rights to a public hearing to be held during the Court's 100th Regular Period of Sessions, at its seat in San José, Costa Rica, on September 3, 2013, from 15:00 hours, and on September 4, 2013, from 9:00, hours, to receive their final oral arguments and final oral observations, respectively, regarding the preliminary objection and possible merits, reparations and costs, as well as to receive the statements of the following persons:

ALLEGED VICTIM (PROPOSED BY THE REPRESENTATIVES):

Allan Randolph Brewer Carías, who will testify on “[t]he [alleged] human rights violations he [supposedly] suffered in the context of this case and on their [alleged] consequences in his professional, personal and family life, and particularly on the damage that those [alleged] violations have inflicted on his physical, mental and moral integrity.”

WITNESSES

A) Proposed by the representatives

1. *Leon Henrique Cottin*, a Venezuelan lawyer who defended Mr. Brewer Carías in the domestic criminal proceeding, who will testify on “the [alleged] violations of due process [supposedly] suffered by professor Brewer Carías during said proceeding.”

B) Proposed by the State

2. *Julián Isaías Rodríguez*, Fiscal General of the Republic in 2002, who will testify on “the events that [supposedly] prompted the Coup d’État of April 11, 2002, and the [alleged] drafting of the ‘Decree of Democratic Transition and National Unity.’”

3. *Ángel Alberto Bellorín*, a Venezuelan lawyer and teacher attached to the Vice Ministry of Education of the Ministry of the Popular Power for Defense, who will testify on “[t]he complaint filed before the Attorney General’s Office against Allan Brewer Carías.”

4. *Néstor Castellanos*, First Prosecutor before the Court of Cassation and the Constitutional Chamber of the Supreme Court of Justice and formerly Fifth Judge of First Instance in a Supervising role in the Judicial Circuit of the State of Zulia,

who will testify on “[t]he stages of the Venezuelan criminal proceeding and the remedies available to persons for their defense.”

5. *Mercedes Prieto*, a lawyer and Director General of Legal Aid at the Attorney General’s Office, appointed by the Attorney General of the Republic for the hearing of the case against Mr. Allan Brewer Carías, who will testify on “[t]he Venezuelan criminal proceeding against the lawyer Allan Brewer Carías [; t]he current status of the case, and the domestic remedies applied before the Attorney General’s Office and those that may be applied before the criminal Courts.”

EXPERT WITNESSES:

A) Proposed by the representatives

1. *Jesús Ollarves Irazábal*, professor of Criminal Law and Public International Law and Human Rights at the Central University of Venezuela and the Andrés Bello Catholic University of Caracas, who will render an opinion on : a) “the different phases of a criminal proceeding in Venezuela and its theoretical time frames, according to the General Criminal Procedural Code, and real time frames, according to forensic practice, particularly as regards the interval between the presentation of the charges and the holding of the preliminary hearing”; b) “whether, according to the Venezuelan legal system, the guarantees of due process enshrined in the Venezuelan Constitution and in the American Convention on Human Rights are enforceable during the different phases of a [criminal] proceeding, particularly the investigation”; c) “the role of the Attorney General’s Office and of the Supervising Judge in that proceeding”; d) “his opinion [...], from the perspective of the conduct of the criminal proceeding, on the stage at which the Judge must rule on requests or demands for absolute annulment of the court records of said proceeding, due to the violation of the defendant’s human rights”; e) “the nature and effects of the amnesty in Venezuela, according to its general legal system and its connection with Decree 5790, Special Amnesty with the Scope, Value and Force of Law.”

B) Proposed by the State :

2. *Octavio José Sisco Ricciardi*, lawyer, “co-author of the Code of Ethics of Venezuelan Judges”, who shall render an expert opinion on “the Judicial Disciplinary System in Venezuela; historical background [; c]omparison between the previous disciplinary system and the system established in the new Constitution of the Bolivarian Republic of Venezuela of 1999[; c]onsiderations on the Code of Ethics of Venezuelan Judges, explaining the differences between both systems and Comparative Law.”

6. To require the Bolivarian Republic of Venezuela to facilitate the exit from and entrance into its territory of the deponents and expert witnesses, if they reside or are present therein, and who have been summoned by this Order to render their statements at the public hearing regarding the preliminary objection and possible merits, reparations and costs in this case, under the terms of Article 26(1) of the Court’s Rules of Procedure.

7. To require the representatives, the State and the Inter-American Commission to serve notice of this Order to the persons they have proposed and who have been summoned to render a statement, in accordance with Article 50(2) and 50(4) of the Rules of Procedure.

8. To inform the representatives, the State and the Inter-American Commission that they must cover the costs incurred in providing or rendering the evidence proposed by them, pursuant to Article 60 of the Rules.

9. To require the representatives, the State and the Inter-American Commission to inform the persons summoned to testify and render expert opinions that, pursuant to Article 54 of the Rules, the Court shall bring to the State's attention the cases in which the persons summoned to appear or testify before this Court fail to do so, or refuse to testify without legitimate cause or who, in the opinion of the Court, have violated their oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.

10. To inform the representatives, the State and the Inter-American Commission that, once the statements and the expert opinions have been rendered at the public hearing, they may present before the Court their final oral arguments and final oral observations, respectively, regarding the preliminary objection and possible merits, reparations and costs in this case.

11. To order the Secretariat of the Court, in accordance with Article 55(3) of the Rules of Procedure, to provide the Inter-American Commission, the representatives and the State with the link to the recording of the public hearing in this case, as soon as possible.

12. To inform the representatives, the State and the Inter-American Commission that the time limit established for submitting their final written arguments and final written observations, respectively, regarding the preliminary objection and possible merits, reparations and costs in this case expires on October 4, 2013. This term is non-renewable.

13. To require the Secretariat of the Court to serve notice of this Order to the representatives, the Bolivarian Republic of Venezuela and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary