

**ORDER OF THE PRESIDENT OF THE**  
**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**FEBRUARY 15, 2013**  
**CASE OF CAMBA CAMPOS *ET AL.* v. ECUADOR**

**HAVING SEEN:**

1. The brief of November 28, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") a case against the Republic of Ecuador (hereinafter "Ecuador" or "the State"). In said brief, the Commission offered one expert testimony.

2. The brief of February 25, 2012, in which the representatives of the alleged victims (hereinafter "the representatives") presented their brief of pleadings, motions and evidence in this case (hereinafter the "brief of pleadings and motions"), and offered as testimonial evidence the statements of fourteen persons and the expert opinions of five others.

3. The brief of June 18, 2012, in which the State submitted its brief of preliminary objections and its answer to the briefs submitting the case and pleadings and motions (hereinafter the "answer brief"), and offered three expert opinions.

4. The notes of the Secretariat of September 25, 2012, in which, pursuant to Article 46(1) of the Court's Rules of Procedure, it requested that the State, the representatives and the Inter-American Commission submit their respective definitive lists of deponents (hereinafter "definitive lists") and, for reasons of procedural economy, indicate which deponents could render their statements by affidavit and which deponents should be summoned to testify at a public hearing.

5. The briefs of October 10 and 11, 2012, in which the Inter-American Commission, the State and the representatives, respectively, forwarded their definitive lists of deponents. The Commission confirmed the expert evidence offered previously and requested that the expert witness be summoned to testify at a public hearing. The representatives indicated that six testimonial statements could be rendered by affidavit, and requested that two deponents and two expert witnesses be summoned to testify at the public hearing. The State confirmed three expert opinions offered previously and requested that all three expert witnesses be summoned to testify at a public hearing.

6. The notes of the Secretariat of October 18, 2012, in which, pursuant to Article 46 of the Rules of the Court and following the instructions of its President, the parties and the Commission were granted a period until October 28, 2012 to submit observations to the respective lists of deponents.

7. The briefs of October 26 and 27, 2012, in which the representatives, the State and the Commission submitted their observations to the definitive lists of deponents. The Inter-American Commission objected to the three expert witnesses proposed by the State. The State, for its part, challenged the expert witness proposed by the Commission and the two expert witnesses proposed by the representatives.

8. The briefs of November 16 and 19, 2012, in which the expert witnesses challenged responded to the observations submitted by the Commission and by the State.

#### **CONSIDERING THAT:**

1. The offer and admission of evidence, together with the summons of alleged victims, witnesses and expert witnesses, are regulated in Articles 35(1)(f), 40(2)(c), 41(1)(c), 46, 47, 50 and 57 of the Court's Rules of Procedure.

2. The Commission and the parties submitted their proposed deponents at the proper procedural stage (*supra* Having Seen 1, 2 and 3).

3. The Court guaranteed the parties the right of defense in respect of the offers of evidence contained in their briefs submitting the case, of pleadings and motions and the answer brief, as well as in their definitive lists.

4. As regards the statements offered by the parties which have not been objected to, the President considers it appropriate to obtain this evidence, so that the Court may assess their value 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 rendered shall be decided in the operative part of this Order (*infra* Operative paragraphs).

5. In this Order the President will examine the following aspects in particular: a) the tacit withdrawal of some statements; b) the admissibility of the expert evidence offered by the Inter-American Commission; c) the State's objection to the expert witnesses proposed by the representatives; d) the Commission's objection to the expert witnesses proposed by the State; e) the Commission's request to submit questions to the expert witnesses offered by the representatives and by the State; f) the manner in which the statements and expert opinions will be received, and g) the final oral and written arguments and observations.

#### **A) Tacit withdrawal of some statements**

6. The President notes that in the brief of pleadings and motions the representatives offered as testimonial evidence the statements of Ramiro Rivera, Julio González, Marcelo Dotti, Guillermo Landázuri, Julio César Trujillo, Agustín Grijalva and Luis Pásara. However, when presenting their definitive list of deponents, the representatives did not refer to those statements. According to Article 46(1) of the Rules, the proper procedural moment for the representatives to confirm or withdraw the statements offered in their brief of pleadings and motions is in the definitive list

requested by the Court.<sup>1</sup> Therefore, by not confirming those testimonial statements in their definitive list, the President understands that the representatives have withdrawn them.

## **B) Expert evidence offered by the Inter-American Commission**

7. The Inter-American Commission offered the expert opinion of Leandro Despouy, on “the guarantees of due process of law in impeachment proceedings and the limits of political review on the Judiciary, in particular, the determination of the grounds for the removal of judges.” The expert would also refer to “the obligation to provide legal remedies so that judges may challenge the legality of their removal, in particular judges of the High Courts.” In its definitive list, the Commission stated that the expert opinion proposed refers to issues of the inter-American public order which are raised in this case. Furthermore, the Commission considered that this case will “allow the Court to develop its jurisprudence as regards the independence of the Judiciary, and at the same time address specific aspects of mechanisms for the dismissal of judges, such as standards of due process in impeachment proceedings, and legal remedies available to challenge a dismissal and guarantee the exercise of human rights.” In that sense, the Commission considered that “the expert opinion will provide the Court with technical elements and a comparative perspective that will contribute to its analysis of the case and will enable it to establish and strengthen relevant standards on the independence of the judiciary.”

8. The State challenged the expert evidence offered by the Commission given that “Leandro Despouy was the Special Rapporteur on the Independence of Judges and Lawyers for the United Nations Human Rights Council from August 2003 until August 2009.” In that regard, the State pointed out that “the former Rapporteur issued a report with recommendations to be followed by the Ecuadorian State, assuming the role of “judge” regarding domestic matters that were occurring at that time, that is, he has already ruled on the case previously. In other words, he participated in a case that is now in litigation, in his role as Rapporteur, and therefore already has an opinion and does not enjoy impartiality in the case.”

9. In response to this objection by the State, the expert witness pointed out that “among the main activities [he] carried out in 2005 as Special Rapporteur on the Independence of Judges and Lawyers, were three visits to the State of Ecuador. The serious judicial and institutional crisis affecting that country prompted a mission in March 2005 and another follow-up mission in July 2005. Those missions were carried out in [his] capacity as an independent expert, in a role entrusted by the United Nations, without being a party to the dispute.” Thus, the expert witness concluded that “the observations and recommendations issued by the Rapporteur do not constitute factors of partiality if the circumstances, purposes and criteria taken into account in its preparation are clearly objective and general.”

10. In this Order, the President will first analyze whether the proposed object of Mr. Despouy’s statement is related to the inter-American public order. If this turns out to be so, the President will then examine the objection filed by the State.

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<sup>1</sup> Cf. *Case of Vera et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering para. 8, and *Case of Castillo González v. Venezuela*. Order of the President of the Inter-American Court of January 31, 2012, Considering para. 7.

11. In the first place, 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.<sup>2</sup>

12. With regard to the manner in which the object of the Mr. Despouy’s expert opinion is linked to the inter-American public order, the President takes note of the Commission’s argument that his expert opinion refers to the issue of the independence of the Judiciary, which transcends the victims in this case. In this sense, this Presidency notes that the object of this expert opinion would facilitate analysis of international standards on the due process of law and the principle of freedom from ex post facto laws in relation to judges. Accordingly, the President considers that the analysis of the State’s obligations in these matters may indeed have an impact on situations that arise in other States Parties to the Convention. Thus, the object of this expert opinion is a matter that affects the inter-American public order in a significant manner and transcends the specific facts of this case and the specific interest of the parties in litigation.

13. Secondly, regarding the objection filed by the State, this Presidency emphasizes that Article 48(1) of the Court’s Rules of Procedure states that:

1. An expert witness may be disqualified based on the following grounds:

[...]

c. he or she 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;

[...]

f. he or she has previously intervened, in any capacity, and before any organ, whether national or international, in relation to the same case.

14. Article 48(1)(f) of the Court’s current Rules establish that grounds for the disqualification of persons proposed as expert witnesses are admissible in cases of having “previously intervened, in any capacity, and before any organ, whether national or international, in relation to the same case.” Therefore, given the view expressed by the State, it is pertinent to consider whether the role and functions performed by Mr.

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<sup>2</sup> Cf. *Case of Vera Vera et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering para. 9, and *Case of the Massacres of El Mozote and Surrounding Areas*, Order of the President of the Inter-American Court of Human Rights, Considering para. 17.

Despouy as Special Rapporteur on the Independence of Judges and Lawyers, in the context of his three visits to Ecuador in 2005, may be understood as a “previous intervention” in the instant case.

15. The President notes that, according to the information provided, Mr. Despouy made three visits to Ecuador and prepared a report in his capacity as United Nations Special Rapporteur. In particular, Mr. Despouy indicated that “[o]ne of the important activities of the Rapporteur includes making visits to countries to examine the situation of the Judiciary, the exercise of the legal profession and all matters related to Justice.” He added that “the recommendations are based on specific facts that affect the inter-American public order, [but] do not set out to judge or participate in an individualized way in specific cases.”

16. In this regard, the State did not present any evidence, beyond the references to the mandate and report of the Rapporteur, that he had intervened in some way in the matter raised in this case, either at the domestic level or in the processing of the case before the Inter-American System, which could create doubts concerning the duty of objectivity of an expert witness before this Court. His examination of the situation in Ecuador in 2005 as United Nations Special Rapporteur would be, precisely, contrary to what the State has argued, an element that *prima facie* would suggest a greater knowledge of the case in his potential role as expert witness in the case.<sup>3</sup> Consequently, this Presidency dismisses the objection raised by the State against Mr. Leandro Despouy and admits his expert testimony. Its object and the manner in which it will be received are set forth in the operative part of this Order (*infra* Operative paragraph 1).

### **C) Objection by the State to the expert witnesses proposed by the representatives**

17. In their brief of pleadings and motions, the representatives proposed as expert evidence the statement of Mr. Rafael Oyarte on “the way in which due process is applied in the Ecuadorian judicial system, the definition of a natural judge, the principle of independence and impartiality and the way in which judges of Ecuador’s highest court were appointed and dismissed.” The representatives also proposed that Mr. Alejandro Ponce Villacis render an expert opinion on “international standards regarding the independence of the Judiciary, the scope of the rights involved in the case and guarantees for the Judicial branch.” Upon presenting their definitive list, the representatives indicated that Mr. Oyarte would testify on “the current regulatory framework, both constitutional and legal and regulatory, governing the selection of judges (*vocales-magistrados*) of the Constitutional Court, the application of impeachment proceedings and grounds for removal” and Mr. Ponce would refer to “international standards on the independence of the Judiciary and the human rights applicable to the case.”

18. The State objected to the expert opinion of Rafael Oyarte, arguing that there was “a difference between the proposed object” stated in the brief of pleadings and motions and that mentioned in “the definitive list of deponents.” It added that “the expert witness was an employee (adviser) at the Constitutional Court [of Ecuador] from July 15, 2000 until January 6, 2004” and therefore “he has prior knowledge of the situation, having worked at the Constitutional Court at the time when the facts that are

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<sup>3</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of June 17, 2011.

now being discussed took place." The State also indicated that Mr. Oyarte "was an employee at the Constitutional Court at the time when the alleged victims were Judges and was even the direct subordinate of one of them, Enrique Herrería Bonnet, [so that] it [would] not be possible [for him to] maintain any of the characteristics of objectivity and impartiality essential to appear before the [...] Court as an expert witness." Thus, the State concluded that "the existence of close ties has been demonstrated and also the subordinate nature of his role while he worked at the service of one of the alleged victims in the former Constitutional Court."

19. Mr. Oyarte responded to the State's challenge by pointing out that "the information contained in the objection is inaccurate." He stated that he was an adviser at the Constitutional Court from the date indicated in the objection, until he submitted his resignation on April 15, 2005, "as confirmed in the certificate issued by the Department of Human Resources of the Constitutional Court, which is attached to the objection." Finally, the expert witness indicated that he "did not join the Constitutional Court at the request of Mr. Enrique Herrería Bonnet and after his termination, [he] returned to offer his services in the same Court until [he] resigned."

20. As to Mr. Ponce, the State challenged his expert opinion arguing that there were "differences between the object proposed" in the brief of pleadings and motions and the object stated in the brief "transmitting the definitive list of deponents, a point that may be confirmed by simply reading the documents presented." The State added that "his incompatibility with the role of expert, would irreparably infringe Article 8" of the American Convention, in other words, "it would compromise the judicial guarantees to which Ecuador is entitled, as a party to the proceedings, given that the aforementioned professional has currently filed cases before this same international court and the inter-American System, in the role of sponsor." The State concluded that "it is not possible to expect the expert witness proposed to be impartial or objective on a matter in which his opposing party acts in several cases. His intervention would break the procedural balance that should exist in any process, this being a method of debate between parties with equality before a third party that is being judged."

21. Mr. Ponce responded to the State's objection by pointing out that "although it is true that he represent[s] persons within the Inter-American Human Rights System, it is no less true that this representation is not among the grounds established in the Rules of the Court for [the] objection to be admissible." Thus, he concluded that "the object of the expert opinion has no connection with the cases in which he [is] acting as defense counsel."

22. Regarding the change in the objects of the expert opinions of Messrs. Oyarte and Ponce, the President notes that these have indeed changed from those presented in the brief of pleadings and motions and the definitive list submitted by the representatives. However, the President recalls that modifying the object of an expert opinion is not among the grounds for disqualification mentioned in Article 48 of the Court's Rules of Procedure, for which reason the objection presented by the State is not valid. Notwithstanding the foregoing, the President understands that the object that will be taken into account in determining the scope of the statement will be that proposed by the representatives in their brief of pleadings and motions.

23. As regards the objection raised against Rafael Oyarte for having been employed at the Constitutional Court at the time when the facts of this case took place, the President notes that in the documents provided by the State, the Constitutional Court

of Ecuador confirmed that between September 25, 2003 and December 9, 2004, Mr. Oyarte's "immediate boss" was the alleged victim, Mr. Enrique Herrería Bonnet, who at that time was President of the Third Chamber. In the opinion of the President, this confirms that the proposed expert witness was previously a subordinate of one of the alleged victims.

24. Based on the foregoing considerations, the President considers valid the objection raised by Ecuador against Mr. Oyarte.

25. Furthermore, regarding the objection against Mr. Ponce, the President considers that the grounds for the objection raised by the State do not apply, since Article 48(1)(b) of the Rules contemplates the assumptions that the proposed expert witness "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 proceeding or before the Inter-American System for the promotion and protection of human rights." The President has pointed out that "the Rules of Procedure do not establish as grounds for disqualification the fact of the expert witness having filed a petition in another case before the inter-American system for the protection of human rights."<sup>4</sup>

26. Based on the foregoing considerations, the President dismisses the objection presented by Ecuador against Mr. Ponce.

#### **D) Objection by the Commission to expert witnesses proposed by the State**

27. In its answer brief, the State offered the expert testimony of: a) Juan Montaña Pinto, on democratic constitutionalism in Ecuador from the Montecristi Constitution to the Transition Regime, the historical background to the Constitution, the political and legal institutions prior to the 2008 Constitution in Ecuador, the Constituent process in Ecuador regarding democratic acceptance and the juridical methodology of the Montecristi Assembly in Ecuador; the referendum to approve the Constitution, and the transition regime; b) Luis Ávila Linzan, on the Constitutional Tribunal and the Constitutional Court, its juridical and institutional development in the Ecuadorian case from a critical perspective, the historical background, the juridical, social and political nature of the Constitutional Court in Ecuador, the Organic Law of Jurisdictional Guarantees and Constitutional Oversight, the powers of the Constitutional Tribunal of Ecuador and the constitutional powers of the Constitutional Court of Ecuador, and c) Pablo Alarcón Peña, on the development of jurisdictional guarantees in Ecuador, the reform of the jurisdictional guarantees contemplated in Ecuador's 1998 Political Constitution contrasted with the 2008 Constitution of the Republic of Ecuador, the modification of the nature of the guarantees (from preventive procedures to hearings, informal proceedings, jurisdiction and emergence of comprehensive reparations), and the current role of the Constitutional Court of Ecuador in relation to jurisdictional guarantees.

28. The Commission challenged the three expert opinions offered by the State, pointing out that Messrs. Montaña, Ávila and Alarcón "currently hold positions in the Constitutional Court of Ecuador as Director of the Center for Constitutional Studies,

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<sup>4</sup> *Case Fornerón and daughter v. Argentina*. Order of the President of the Inter-American Court of September 13, 2011, Considering para. 14, and *Case of Mohamed v. Argentina*. Order of the President of the Inter-American Court of June 4, 2012, Considering para. 31.

Constitutional Rapporteur and Technical Jurisdictional Secretary," respectively. In this regard, it noted that the three expert witnesses proposed would be "in a subordinate position to the State of Ecuador, since they are government officials, and furthermore, some aspects of their expert opinions specifically concern the very institution for which they work, a circumstance that would compromise their impartiality."

29. The State rejected the Commission's objection to the expert witnesses offered and requested that the Court consider "the objection as not presented, since there is no question that the [Commission] is not a party to the proceedings, and therefore lack[ed]" this power. It expressed "particular amazement" that the Commission "should have presented an objection to the expert witnesses offered by the State, since challenging expert witnesses is not within its powers." The State argued that "it would appear that [the Commission] has unfortunately become bogged down in old regulations that have been superseded, and which viewed the inter-American process in another way." It indicated that "the new Rules consider the Commission as an organ of the System, its description as a 'party to proceedings' disappeared", and this has allowed for "a gradual balance between the parties involved in the proceedings, and ensured that the alleged victim has a fair participation." In particular, it argued that "in the evidentiary sphere, the current Rules of Procedure have allowed [the Commission], only exceptionally, the possibility of requesting the appearance of expert witnesses, requiring it to justify their need for purposes of the inter-American public order, a situation that apparently has not been justified." The State further argued that "it [would] appear that [the Commission] has not understood the evolution of the System through the new Rules of Procedure, which do not grant that power" to the Commission. "Indeed, to be able to question the expert witnesses presented by the parties", the Commission "must seek authorization from the Inter-American Court" because "the Court, upon issuing its Rules understood that a process can only be undertaken before an impartial third party" and "between two parties on an equal footing." Therefore, "only exceptionally, and based on the need to promote the inter-American interest, may that equality be broken, a matter that should be reviewed in due course in other regulations so that the balance is not affected in any case."

30. The expert witness Montaña responded to the Commission's challenge stating that its "objections regarding his impartiality lack objective grounds since they are based on an assumption that a legal expert on this matter is unable to provide technical and objective criteria, merely because he is a public official in a court that did not participate in any way in the facts that are being judged." Likewise, he indicated that he is Executive Director of the "Center for Studies and Dissemination of Constitutional Law, [which is an] independent academic body, created by the Organic Law of Constitutional Guarantees and Constitutional Oversight, attached to the Constitutional Court, and responsible for disseminating the contents of the Constitution both among public officials of the Ecuadorian State and citizens in general."

31. The expert witness Alarcón responded to the Commission's objection by pointing out that "the objections regarding impartiality argued by the Commission are groundless, since they are based on the notion that an expert/academic/jurist, merely because of his work as a civil servant, is unable to provide technical and objective criteria within an expert opinion." He also stated that he is the "Technical Jurisdictional Secretary of the Constitutional Court of Ecuador" and that "the challenge to his impartiality related to [his] work as an official - adviser of the Constitutional Court- ignores [...] Article 430 of the Constitution of Ecuador which recognizes and guarantees



the Court's administrative and financial autonomy, which is not attached to any function of the State."

32. The expert witness Ávila responded to the Commission's objection by stating that "an employment relationship is not based on belonging to a department of the State in the case of the Constitutional Court, since on human rights matters the defense or conviction does not relate to that institution, but to the State as a whole."

33. Regarding the disqualification of these expert witnesses, this Presidency emphasizes that the admissibility or not of an objection is a procedural matter that essentially concerns the State and the representatives as opposing parties. Consequently, in the specific context of this case, it is not possible to rule on this request by the Commission.

**E) Request by the Commission to submit questions to expert witnesses offered by the representatives and by the State**

34. In its observations to the definitive lists, the Commission requested "a verbal or written opportunity to submit questions to the expert witnesses Rafael Oyarte and Alejandro Ponce Villacís, proposed by the representatives, [as well as to expert witness] Luis Ávila Linzan, offered by the State," whose statements "are related both to the inter-American public order and to the subject matter of the expert opinion offered by the Inter-American Commission."

35. In particular, the Commission pointed out that "the expert opinion of [Mr.] Ponce Villacís, regarding international standards on the independence of the Judiciary is directly related to the issues of judicial guarantees and judicial protection in the proceedings for the dismissal of judges, which [Mr.] Despouy will address in his expert opinion." The Commission further stated that "the expert opinion of Mr. Oyarte on the current regulatory framework in Ecuador, and the expert opinion of Mr. Ávila Linzan on the institutional development of the country's Constitutional Court, complement the expert opinion rendered by Dr. Despouy on international standards and the situation of High Court judges, through their application to the specific case of the legal-institutional system of a particular State."

36. With regard to the Commission's request, the President recalls the provisions of the Rules of Procedure regarding the reception of statements proposed by the Commission, and also in relation to its authority to interrogate the deponents offered by the other parties.<sup>5</sup> In particular, it is pertinent to recall Article 50(5) of the Rules of Procedure which states 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 allows the Commission to interrogate 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

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<sup>5</sup> Cf. *Case of González Medina and Family v. Dominican Republic*, Considering para. 48, and *Case Luna López v. Honduras*. Order of the President of the Court of December 20, of 2012, Considering para. 20.

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.<sup>6</sup>

37. The President notes that the Commission argued that two “matters” link “part of the proposed objects” of the expert opinions offered by the State and the representatives with the expert opinion it has offered and with issues related to the inter-American public order in this case, namely: i) international standards on the independence of the Judiciary, and ii) international standards and the situation of High Court judges, through their application to the specific case of the legal-institutional system of a particular State.

38. Regarding the aspects of the links described and alleged by the Commission, the President recalls that it previously considered that the object of Mr. Despouy’s expert opinion concerns the inter-American public order because it is related to the State’s obligations stemming from the guarantee of independence of the Judiciary (*supra* Considering para. 16). The President considers that there is a coincidence between the object of the expert opinion offered by the Commission and a part of the objects of the expert opinions offered by the State and by the representatives regarding which the Commission requested an opportunity to submit questions.

39. Therefore, pursuant to Articles 50(5) and 52(3) of the Rules, the President considers it appropriate to grant the Commission an opportunity to submit questions for the expert witnesses Ponce and Ávila, specifically on matters related to the inter-American public order. As to its petition to interrogate Mr. Oyarte, given that the challenge presented was accepted by the State, it is not appropriate to analyze this request.

#### **F) Manner in which the statements and expert opinions shall be received**

40. It is necessary to ensure 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 right of the parties 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.

##### *1. Statements and expert opinions to be rendered by affidavit*

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<sup>6</sup> Cf. *Case of Contreras et al. v. El Salvador*. Order of the President of the Inter-American Court of April 14, 2011, Considering para. 25, and *Case of Quintana Coello et al. v. Ecuador*. Order of the President of the Inter-American Court of December 20, 2012, Considering para. 37.

41. Bearing in mind the provisions of Article 50(1) of the Rules and the indications of the Commission, the representatives and the State in their definitive lists of deponents, 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 described in the Operative paragraph 1 of this Order.

42. The President recalls that Article 50(5) of the Court's Rules of Procedure allows alleged victims or their representatives and the State the possibility of submitting a list of questions to those persons summoned to render statements before a notary public. In application of this provision, the President grants an opportunity to the representatives and the State, as well as to the Commission, as applicable, (*supra* Considering para. 39), to present, if they so wish, any questions considered pertinent to the deponents and expert witnesses offered in the aforementioned Operative paragraph. Upon rendering their statements before a notary public, the deponents must respond to 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, as well as the Commission, may present any observations deemed pertinent within the term indicated. The corresponding time limits shall be specified *infra* in Operative paragraphs 2, 3, 4 of this Order. The Court shall assess the evidentiary value of these statements in due course, taking into account the points of view, if any, expressed by the State in exercise of its right to defense.

*2. Statements and expert opinions to be rendered at a public hearing*

43. The Court records in the instant case are now ready for the opening of the oral proceedings regarding the merits and possible reparations and costs, and therefore the President deems it pertinent to convene a public hearing to receive the statements of an alleged victim, one witness and two expert witnesses proposed by the representatives, the Commission and the State and specified in Operative paragraph 5 of this Order.

**G) Final oral and written arguments and observations**

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

45. According to Article 56 of the Rules of Procedure, alleged victims or their representatives, the State and the Commission may submit their final written arguments and final written observations, respectively, regarding the preliminary objection and possible merits, reparations and costs, within the term established in Operative paragraph 3 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 the Court's Rules of Procedure,

### DECIDES:

1. To require, for the reasons stated in this Order (*supra* Considering paragraphs 40 to 42), in accordance with the principle of procedural economy and in exercise of the authority granted under Article 50(1) of the Rules of the Court, the following individuals to render their statements by affidavit:

#### A) Alleged victims proposed by the representatives

1) *Enrique Herrería Bonnet; Miguel Camba Campos; Manuel Jaramillo Córdova; Jaime Manuel Nogales Izureta; Luis Rojas Bajaña; Mauro Terán Cevallos, and Simón Zabala Guzmán* who shall render statements on: i) the alleged facts of the case, in particular the alleged manner in which they were judged and their experience of dismissal; ii) the alleged personal effects they suffered and may suffer due to the alleged violation of their human rights, and iii) their potential feelings if they were to be compensated in the event of a violation of their rights being declared.

#### B) Witness proposed by the representatives

2) *Luis Fernando Torres*, who will testify on: i) the events that allegedly occurred in the National Congress in relation to the dismissal of the Judges of the Constitutional Court; ii) how the alleged impeachment proceedings were conducted, the summons, the formation of the congressional majority; iii) the arguments used by members of Congress during the congressional sessions, and iv) the alleged motives and reasons that prompted Congress to approve the alleged dismissal and the resolutions.

#### C) Expert witness offered by the representatives

3) *Alejandro Ponce Villacís*, who will testify on the international standards of independence of the Judiciary, the scope of the rights involved in the case and the guarantees of the judicial branch, in relation to the facts of this case.

#### D) Expert witnesses proposed by the State

4) *Luis Ávila Linzán*, who will testify on : i) the Constitutional Tribunal and the Constitutional Court; ii) institutional and legal developments in the Ecuadorian case from a critical perspective; iii) the historical background; iv) the juridical, social and political nature of the Constitutional Court in Ecuador; v) the Law of Constitutional Oversight and the Organic Law of Jurisdictional

Guarantees and Constitutional Oversight, and vi) the powers of the Constitutional Tribunal of Ecuador and the constitutional powers of the Constitutional Court of Ecuador, applicable to the facts of this case.

5) *Pablo Alarcón Peña*, who will testify on: i) the development of jurisdictional guarantees in Ecuador; ii) the reform of jurisdictional guarantees contemplated in the 1998 Political Constitution compared with the 2008 Constitution of the Republic of Ecuador; iii) the modification of the nature of those guarantees (from preventive procedures to hearings, informal proceedings, jurisdiction and emergence of comprehensive reparations), and iv) the current role of the Constitutional Court of Ecuador in relation to the jurisdictional guarantees.

2. To require the representatives, the State and the Inter-American Commission, as the case may be, to submit, if considered pertinent and within the non-renewable term that expires on February 11, 2013, any questions deemed appropriate through the Inter-American Court to the witnesses and expert witnesses mentioned in Operative paragraph 1 of this Order. The statements and expert opinions required in Operative paragraph 1 must be submitted no later than March 13, 2013.

3. To require the representatives, the State, the Commission and the Secretariat of the Court to coordinate and make the necessary arrangements so that, once the respective questions of the parties have been received, the deponents and expert witnesses may include the respective answers in their statements rendered by affidavit, under the terms of Considering paragraph 42 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 can submit their observations to those statements and expert opinions, respectively, with their final arguments, at the latest.

5. To summon the representatives, the State and the Inter-American Commission to a public hearing to be held during the Court's 47th Extraordinary Period of Sessions, in the city of Medellín, Colombia, on March 18, 2013, from 15:00 hours, and on March 19, 2013, from 09:00 hours, in order to hear their final oral arguments and final oral observations, respectively, regarding the preliminary objections and possible merits, reparations and costs, as well as to receive the statements and expert opinions of the following persons:

**A) Alleged victim proposed by the representatives**

1) *Oswaldo Cevallos Bueno*, who will testify on: i) the alleged facts of the case, and particularly the alleged proceedings against the judges and his experience of dismissal; ii) the alleged personal consequences that he suffered and may suffer due to the alleged violation of his human rights, and iii) his potential feelings if he were to be compensated in the event of a violation of his rights being declared.

**B) Witness offered by the representatives**

2) *Wilfrido Lucero*, who will testify on: i) the alleged facts that occurred in the National Congress in relation to the dismissal of the Judges of the Constitutional Court; ii) how the alleged impeachment proceedings were conducted, the summons, the formation of the congressional majority; iii) the arguments used by members of Congress during the congressional sessions, and iv) the alleged motives and reasons that prompted Congress to approve the alleged dismissals and the resolutions.

**C) Expert witness offered by the Inter-American Commission**

3) *Leandro Despouy*, who will testify, in relation to the facts of this case, on the guarantees of due process of law in impeachment proceedings and the limits of political review on the Judiciary, in particular, the determination of the grounds for the removal of judges.

**D) Expert witness offered by the State**

4) *Juan Montaña Pinto*, who will testify on: i) democratic constitutionalism in Ecuador from the Montecristi Constitution to the Transition Regime; ii) the historical constitutional background; iii) the political and juridical institutions prior to the 2008 Constitution in Ecuador; iv) the constituent process in Ecuador in terms of the democratic reception and the juridical methodology of the Montecristi Assembly in Ecuador; v) the referendum that approved the Constitution, and vi) the transition regime.

6. To require the Republic of Ecuador to facilitate the exit and entry into its territory of the deponents and expert witnesses who reside or are present therein, and who have been summoned in this Order to render their testimonies and expert reports at the public hearing regarding the preliminary objections 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 Republic of Colombia, pursuant to Article 26(3) of the Rules of Procedure, to offer its cooperation during the public hearing regarding the preliminary objections and possible merits, reparations and costs in this case, to be held in that country, convened through this Order, and to facilitate the exit from and entrance into its territory of the persons who have been summoned to testify before the Inter-American Court at this hearing, and of those who shall represent the Inter-American Commission, the State and the alleged victims at said hearing. For those purposes, the Secretariat shall serve notice of this Order to the Republic of Colombia.

8. To require the Inter-American Commission, the representatives and the State to serve notice of this Order to the persons they have proposed and who have been summoned to render a statement and/or an expert opinion, under the terms of Article 50(2) and 50(4) of the Rules.

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

10. To require the Commission, the representatives and the State to inform the persons summoned to testify by the Court and to 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.

11. To inform the representative, the State and the Inter-American Commission that, once the statements and 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 objections and possible merits, reparations and costs in this case.

12. To instruct the Secretariat of the Court, pursuant to 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.

13. 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 objections and possible merits, reparations and costs in this case, expires on April 19, 2013. This term is non-renewable.

14. To require the Secretariat of the Inter-American Court to serve notice of this Order to the Inter-American Commission on Human Rights, the representatives of the alleged victims and the Republic of Ecuador.

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary