

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

MARCH 22, 2012

**CASE OF THE MASSACRES OF EL MOZOTE AND SURROUNDING AREAS
v. EL SALVADOR**

HAVING SEEN:

1. The brief submitting the case presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of March 8, 2011, in which the Commission offered three expert opinions, indicating their object, but not identifying one of the proposed expert witnesses.

2. The note of March 15, 2011, in which the Secretariat of the Inter-American Court (hereinafter the "the Secretariat") stated that it would await further information from the Inter-American Commission on the identity and *curriculum vitae* of a third expert witness who was not named in the brief submitting the case (*supra* Having seen 1), the deadline for submitting said information having expired on March 29, 2011, and the note of May 10, 2011, in which the Secretariat confirmed that said information was not received. Also, the communication of May 27, 2011, in which the Commission submitted the name of the third expert witness proposed, Mr. Juan Méndez, together with his *curriculum vitae*.

3. The brief of August 12, 2011, in which the representatives of the alleged victims¹ (hereinafter "the representatives") submitted their pleadings, motions and evidence in this case (hereinafter the "brief of pleadings and motions"), and offered eleven statements and four expert opinions. Likewise, they submitted a request on behalf of the alleged victims to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Victims' Assistance Fund" or "the Assistance Fund" or "the Fund") "to cover specific costs related to the production of evidence during the proceedings before the Court," which were specified.

¹ The alleged victims in this case appointed the *Centro por la Justicia y el Derecho Internacional* – CEJIL (Center for Justice and International Law) and the *Oficina de Tutela Legal del Arzobispado de San Salvador* – OTLA (Human Rights Office of the Archdiocese of San Salvador) as their representatives.

4. The Order of the President of the Court of December 1, 2011 regarding the representatives' request to have recourse to the Victims' Assistance Fund (*supra* Having seen 3).

5. The brief in response to the case submitted and observations to the brief of pleadings and motions (hereinafter also the "response brief") submitted by the Republic of El Salvador (hereinafter "El Salvador" or "the State") on December 26, 2011, in which the State acknowledged its responsibility and stated that, by virtue of this, it was "not [...] present[ing] the list of declarants and expert witnesses contemplated in Article 41.1, letters b and c of the Rules."

6. The briefs of February 10, 2012, in which the Commission and the representatives, respectively, presented their observations to the State's acknowledgement of responsibility.

7. The notes of the Secretariat of February 16, 2012, in which, following the instructions of the President and in accordance with Article 46.1 of the Rules of the Court applicable to the present case (hereinafter "the Rules")², the representatives and the Commission were asked to submit, by February 22, 2012 at the latest, their respective definitive lists of proposed declarants (hereinafter "definitive lists"), in order to schedule the public hearing in the instant case. Likewise, in accordance with the principle of procedural economy and pursuant to Article 46 of the Rules, the representatives and the Commission were asked to indicate which of the declarants offered could render their statements through affidavits before a notary public, and which of the declarants should be summoned to testify at a public hearing.

8. The briefs of February 17 and 22, 2012, in which the Inter-American Commission and the representatives, respectively, submitted their definitive lists. The Commission confirmed its offer, requested that two of the expert opinions be received at a public hearing and stated that the three expert opinions proposed would significantly affect the Inter-American public order, under the terms of Article 35.1.f of the Court's Rules. The representatives requested the substitution of one of the declarants offered, and asked that the Court receive three statements and one expert opinion at a public hearing. Regarding another expert opinion, they indicated that this could also be received at a public hearing.

9. The notes of the Secretariat of February 27, 2012, in which the definitive lists were transmitted to the parties and they were informed that, under the terms of Article 46 of the Rules and following the instructions of the President, they had been granted a period of 10 days, as of receiving the aforesaid definitive lists, to present any observations deemed pertinent.

10. The briefs of March 5, 6 and 8, 2012 submitted by the State, the representatives and the Commission, respectively. The State of El Salvador indicated that it "h[ad] no observations to make" to the definitive lists of declarants submitted by the representatives of the alleged victims and by the Commission. For their part, the representatives considered it important that the expert opinions which the Commission has requested to be rendered at a public hearing, are received by that means, given the significance of the matters under consideration. In its brief, the Commission stated that it had no observations to make to the representatives' definitive list of declarants. Likewise, it requested "the opportunity to formulate questions, verbally or in writing, insofar as these are relevant and reasonable, to two of the expert witnesses offered by t [he] representatives whose statements are related

² Rules approved by the Court in its Eighty-fifth Ordinary Period of Sessions held from November 16 to 28, 2009.

both to the Inter-American public order and to the subject matter of the expert reports offered by the Inter-American Commission.”

11. The notes of the Secretariat of March 9, 2012, in which, following the instructions of the President of the Court, the parties were informed that the Court has scheduled a public hearing on the merits, reparations and costs of this case during its 45th Extraordinary Period of Sessions, which will take place from April 23 to 27, 2012 in the city of Guayaquil, in the Republic of Ecuador.

CONSIDERING THAT:

1. The offer and admission of the evidence, as well as the formal summons to the alleged victims, witnesses and expert witnesses, are regulated under Articles 35.1.f, 40.2.c, 41.1.c, 46, 47, 48, 49, 50, 52.3, and 57 of the Court’s Rules.

2. The Commission offered as evidence three expert opinions, the representatives offered eleven statements as well as four expert opinions, and the State did not offer any declarants or expert witnesses. The evidence offered by the parties was communicated at the appropriate procedural moment, with the exception of one of the expert opinions proposed by the Commission, which was submitted after the deadline had expired (*supra* Having seen 2 and *infra* considering paragraphs 15 and 16).

3. The Court allowed the parties the right of defense with respect to the evidence offered in the brief submitting the case and in the brief of pleading and motions, as well as in the definitive lists (*supra* Having Seen paragraph 9), without any objections or challenges being presented.

4. The President confirmed that, among the persons proposed by the representatives as definitive witnesses, four persons were mentioned for the first time as alleged victims in the lists attached to the representatives’ brief of pleadings and motions.³ Given the circumstances of this case, which concerns numerous alleged victims, and given the procedural details involved in determining their identity, the President deems it appropriate to receive their statements, without requiring that the alleged victims in the instant case before the Court be duly identified at this stage of the proceedings.

5. As to the individuals offered as witnesses or expert witnesses by the representatives, whose statements or expert opinions have not been objected to, this Presidency deems it appropriate to gather said evidence, so that the Court may determine its value at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. This includes the statements of Juan Bautista Márquez Argueta, Sofía Romero Pereira, Sonia Tobar, María del Rosario López Sánchez, Antonia Guevara Díaz, Juan Antonio Pereira Vigil, María Margarita Chicas Márquez, Eduardo Conception Argueta Márquez, Saturnino Argueta Claros, José Pablo Díaz Portillo, and the expert opinions of María Sol Yáñez de la Cruz, Luis Fondebrider, Silvana Turner and Mercedes C. Doretti, Salvador Eduardo Menéndez Leal and Father David Scott Blanchard. The value of these statements and of the expert opinions shall be assessed in due course, within the context of the existing body of evidence and according to the rules of sound

³ Namely: 1) Sonia Tobar, 2) Antonia Guevara Díaz, 3) Eduardo Conception Argueta Márquez and 4) José Pablo Díaz Portillo.

judgment. The object of those statements and the manner in which they are received are specified in the operative part of this Order (*infra* operative paragraphs 1 and 5).

6. Furthermore, in the instant Order the President shall specifically examine: a) the object of the statements offered by the representatives; b) the request for the substitution of a declarant offered by the representatives; c) the admissibility of the expert evidence offered by the Inter-American Commission; d) the means by which the statements and the expert reports are to be received and the request by the Inter-American Commission to formulate questions for the expert witnesses offered by the representatives; e) the application of the Victims' Legal Assistance Fund, and f) the final oral and written arguments and observations.

a) Object of the statements offered by the representatives

7. The President notes, on the one hand, that all the objects of the statements offered by the representatives were modified in their definitive list. In general terms, it is clear that this modification aims to include within the object "the facts of the massacre and its consequences." In this regard, the representatives offered no explanation about this addition to the content of the statements, and neither the State nor the Commission raised any objection in this regard.

8. As to the joint expert report of the forensic anthropologists of the Argentinean Forensic Anthropology Team (EAAF) Luis Fondebrider, Silvana Turner and Mercedes C. Doretti, the President notes that in their definitive list, the representatives modified the content of this expert opinion to include, in addition, "the difficulties encountered in carrying out the exhumations, the relations with the authorities in charge of the investigation, the identification of the victims, and the exercise of their work in general" (underlining added). Furthermore, the representatives requested that the expert opinion be offered jointly, given that each of the anthropologists was involved in different stages of the exhumation process, which began in 1992 and the last stage took place in 2004. For their part, neither the State nor the Commission made any observations to said evidence.

9. Regarding the statements, it is appropriate to recall that the Court has repeatedly held that the statements of alleged victims and other persons with a direct interest in the case are useful inasmuch as they can provide further information on the alleged violations and their consequences.⁴

10. Bearing in mind the State's acknowledgment of responsibility (*supra* Having seen paragraph 5), and in the absence of any objection to the aforementioned additions, the President deems it appropriate to admit the objects of the statements and of the joint expert report, as presented in the representatives' definitive list, without prejudice to the fact that the President shall determine the objects of the testimonies and of the joint expert opinion under the terms stated in the operative part of this Order (*infra* operative paragraphs 1 and 5).

b) Request for the substitution of a declarant offered by the representatives

⁴ Cf. *Case of the "Massacre of Pueblo Bello" v. Colombia*. Order of the President of the Inter-American Court of Human Rights of July 29, 2005, Considering paragraph 7, and *Case Palma Mendoza et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of January 25, 2012, Considering paragraph 6.

11. In their definitive list, the representatives requested that the testimony of Mr. Pedro Chicas Romero be replaced by that of Mrs. Dorila Márquez de Márquez, under the terms of Article 49 of the Rules, given that Mr. Chicas Romero is unable to render his statement for medical reasons. A medical certificate was also submitted to justify said request. According to the representatives, both individuals have the same qualities and the object of the original statement offered would be respected. Neither the State nor the Commission presented any observations to this request.

12. As to the request for the substitution of a declarant, pursuant to Article 49 of the Rules, the Court may accept such a replacement "exceptionally", "upon receiving a well-founded request" and "after hearing the opinion of the opposing party," as long as the "replacement is identified" and "always respecting the object of the [...] expert opinion originally offered."

13. The President confirms that, in their definitive list, the representatives modified the content of said statement to include "the facts of the massacre and its consequences." Notwithstanding this, the President considers that in this case Mr. Chicas Romero's inability to appear before the Court, which the representatives offered as grounds for their request, is sufficiently proven. Given that the parties have been granted the right to submit their observations regarding this request and have not raised any objection; that the representatives have named the substitute declarant who will render a statement, and, in light of the points mentioned in Considering paragraph 10 *supra* on the object of the statements, pursuant to Article 49 of the Rules, the President decides to admit the substitution proposed by the representatives and, therefore, admits the statement of Mrs. Dorila Márquez de Márquez. The value of this testimony shall be considered in due course, taking into account the existing body of evidence and the rules of sound judgment. Likewise, the object and the procedure to be followed shall be specified in the operative part of this Order (*infra* operative paragraph 5).

c) Admissibility of the expert evidence offered by the Inter-American Commission

14. In its presentation of the case, the Inter-American Commission offered three expert opinions. According to the information provided by the Commission, these expert opinions would be rendered by: a) Juan Ernesto Méndez on "[t]he context of the armed conflict in El Salvador, especially at the time to which the facts of the case refer. The testimony will refer to the human rights violations that occurred during that time, including the mass and indiscriminate attacks against the civilian population and the *modus operandi* used during the *tierra arrasada* ('scorched earth')" operations; b) Michael Reed Hurtado on "the General Amnesty Law for the Consolidation of Peace, its background, scope and effects as a factor in the impunity of crimes against humanity committed during the armed conflict by the Salvadoran Armed Forces. Also, the testimony will refer to the attempts at interpretation by the Supreme Court of Justice, the effects of such interpretations, as well as the internal mechanisms to render ineffective the aforementioned Law", and c) Tal Linda Ileen Simmons on "internationally accepted parameters to be observed in the conduct of exhumations in cases such as this, as well as an analysis of the exhumations conducted internally in light of these standards."

c.1) Extemporaneous offer

15. In submitting the case to the Court, the Commission offered three expert opinions, and indicated their object but did not identify one of the expert witnesses proposed. This point was brought to the attention of the Commission in a note from the Secretariat on

March 15, 2011, which indicated that the deadline for submitting said information expired on March 29, 2011 (*supra* Having seen 2). On March 25, 2011 the Commission presented the original of the brief submitting the case, together with the list of annexes, and the corresponding evidence, but made no reference to the pending information concerning the third expert opinion offered. On May 27, 2011, two months after the deadline had expired, the Commission submitted the name of the other expert witness proposed, Mr. Juan Ernesto Méndez, together with his curriculum vitae (*supra* Having seen 2). For their part, the representatives and the State presented no observations regarding this situation. Finally, on February 17, 2012 the Commission submitted its definitive list, which referred to the possible connection of the proposed expert opinion with the Inter-American public order.⁵

16. According to Article 35.1.f of the Rules of the Court, the appropriate procedural moment for the presentation of expert evidence by the Commission is during the filing of the case, with 21 additional days being granted to submit the relevant attachments, pursuant to Article 28 of the Rules. The Commission, having submitted the name of the proposed expert, Mr. Juan Ernesto Méndez, and his *curriculum vitae*, after the deadline, did not offer any explanation whatsoever; therefore, the failure to submit the evidence in a timely and proper manner leads to it being declared inadmissible, under the terms of Article 57.2, when insufficient justification is offered for submitting evidence outside the statutory time limit.⁶

c.2) Effect on the Inter-American public order

17. 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.⁷

⁵ Regarding the possible connection of the proposed expert opinion with the Inter-American public order, the Commission held that this “will allow the Court to explore the background information examined in the context of the case of *Contreras et al. v. El Salvador*, decided recently by the Court. Bearing in mind that the case of *Contreras et al.* was related to the forced disappearance of children, the expert opinion offered on this occasion will provide the Court with more specific contextual information on the *modus operandi* of another of the ways in which the Salvadoran security forces incurred in serious human rights violations during the armed conflict, that is, the massive and indiscriminate attacks against the civilian population, known as “scorched earth operations.” Although on previous occasions the Court has held that the context in which certain violations occurred in a specific country do not necessarily constitute issues that affect the Inter-American public order, the Commission considers that the background assessment carried out by the Court under the terms indicated will necessarily have an impact on the Inter-American public order, given the scale of the violations which occurred in that context, the fact that a comprehensive judgment in this context can contribute to the historical truth through a judicial investigation, and its similarity to other situations in several countries of the region, specifically in the context of the armed conflicts. Furthermore, these elements will allow the Court to define standards on issues such as access to justice and due diligence in the investigation of human rights violations, which have occurred in similar contexts to that of the instant case. Such standards will have an impact on the struggle against impunity in other countries of the region.”

⁶ Cf. *Case of Fontevecchia and D’Amico v. Argentina*. Order of the President of the Inter-American Court of Human Rights of July 27, 2011, Considering paragraph 9, and *Case of Díaz Peña v. Venezuela*. Order of the President of the Inter-American Court of Human Rights of November 2, 2011, Considering paragraph 20.

⁷ Cf. *Case of Pedro Miguel Vera Vera et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering paragraph 9, and *Case of Palma Mendoza et al. v. Ecuador*, *supra* note 4, Considering paragraph 9.

18. As to the expert opinion offered by Michael Reed Hurtado (*supra* Considering paragraph 14), the Commission indicated that it will offer “specific elements that will allow the Court to consolidate its case law on the subject of amnesty following the cases of *Barrios Altos v. Peru*, *Almonacid Arellano v. Chile*, *Gelman v. Uruguay* and *Gomes Lund v. Brazil*. The expert witness will offer the Court information on the amnesty law in El Salvador and will analyze its content in light of international standards on the matter. The specificities of El Salvador’s Amnesty Law relate to different aspects, including the scope and effects of subsequent judicial decisions. The expert witness will also define the elements to be taken into consideration in determining the reparations related to the duty to investigate and the amnesty laws, bearing in mind any new aspects on this matter that arise in the instant case. All these elements will contribute to the development of case law on matters of impunity and transitional justice, with an impact on the Inter-American public order.”

19. The object of the proposed expert opinion, as stated by the Commission *supra*, specifically refers to the background, scope and effects of the General Amnesty Law for the Consolidation of Peace in El Salvador, an object that is limited to the specific situation in that country. From the information provided, it is not clear that the object of that expert opinion concerns the Inter-American public order, and therefore it is not appropriate to admit the expert opinion of Michael Reed Hurtado offered by the Inter-American Commission, based on its impact on the Inter-American public order.

20. Regarding the proposed expert opinion of Tal Linda Ileen Simmons (*supra* Considering paragraph 14), the Commission indicated that she will provide the Court with “information on technical questions whose observance has implications for the investigation of serious human rights violations and the possibilities of obtaining justice and reparation. In the present case, the exhumations were conducted at different times and over a prolonged period. This technical information will enable the Court to determine whether the procedures carried out comply with the relevant international standards and, consequently, to define general parameters on the State’s obligations in the context of the exhumation procedure in cases such as this.”

21. In this regard, the President considers that the evidence proposed on this matter can serve to strengthen the protection of the Inter-American Human Rights System, by establishing general parameters on the State’s obligations in the context of the exhumation procedure, which transcend the particular interests of the parties in a specific process, involving all its members, so that it produces a significant effect on the Inter-American public order of human rights.

22. For the foregoing reasons, the President considers it appropriate that the Court receive the expert opinion of Mrs. Tal Linda Ileen Simmons. Likewise, he emphasizes that no objection to this evidence was raised by the other parties. The value of this expert opinion shall be considered in due course, within the context of the existing body of evidence and according to the rules of sound judgment. The object and means by which this expert opinion shall be received is specified in the operative part of this Order (*infra* operative paragraph 1).

d) Means by which the statements and expert reports shall be received and request by the Inter-American Commission to formulate questions to the expert witnesses offered by the representatives

23. It is necessary to ensure the broadest possible presentation of the facts and arguments by the parties, insofar as these are pertinent to the settlement of controversial

matters, guaranteeing the parties both the right to defend their respective positions and the possibility of adequately examining the cases submitted to the consideration of the Court, bearing in mind that their number has grown considerably and is increasing constantly. Likewise, it is necessary to ensure a reasonable term for the duration of the process, as required for effective access to justice. It is therefore essential to obtain as many witness statements and expert reports as possible through affidavits rendered before a notary public, and to hear those alleged victims, witnesses and expert witnesses at a public hearing whose direct testimony is truly indispensable, taking into consideration the circumstances of the case and the object of the statements and expert opinions.

d.1) Statements and expert reports to be rendered before a notary public

24. Bearing in mind the provisions of Article 50.1 of the Rules, the indications of the Commission and the representatives in their definitive lists of declarants, 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 of Juan Bautista Márquez Argueta, Sofía Romero Pereira, Sonia Tobar, Antonia Guevara Díaz, Juan Antonio Pereira Vigil, Eduardo Concepción Argueta Márquez, Saturnino Argueta Claros, José Pablo Díaz Portillo, proposed by the representatives; the joint expert opinion of Luis Fondebrider, Silvana Turner and Mercedes C. Doretti; and the expert opinion of Father David Scott Blanchard, proposed by the representatives, together with the expert opinion of Tal Linda Ileen Simmons, offered by the Commission. The President recalls that Article 50.5 of the Rules of the Court makes provision for alleged victims or their representatives and the State to formulate questions in writing to be answered by persons summoned to render a statement before a notary public.

25. In application of the aforementioned provision, the President proceeds to grant an opportunity for the representatives and the State to submit, if they so wish, any questions they consider pertinent to the declarants and expert witnesses named in the preceding paragraph. In rendering their statements before a notary public, the declarants and the expert witnesses shall answer these questions, unless the President orders otherwise. The relevant deadlines shall be specified *infra*, in the second and third operative paragraphs of this Order. The aforementioned statements and expert opinions shall be transmitted to the Commission, the State and the representatives. The State and the representatives, in turn, may submit any observations deemed pertinent within the period indicated in the operative part of this Order (*infra* operative paragraph 4). The Court shall assess the value of this evidence in due course, taking into account the points of view, if any, expressed by the State and the representatives in the exercise of their right to defense, within the context of the existing body of evidence and according to the rules of sound judgment.

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

26. Given that the Court records in the instant case are ready for the opening of the oral proceedings on the merits and possible reparations and costs, the President deems it appropriate to convene a public hearing to receive the statements of Dorila Márquez de Márquez, María del Rosario López Sánchez, María Margarita Chicas Márquez, as well as the expert opinions of Salvador Eduardo Menéndez Leal and María Sol Yáñez de la Cruz, all proposed by the representatives.

d.3) Request by the Inter-American Commission to formulate questions for the expert witnesses offered by the representatives

27. In its observations to the definitive lists (*supra* Having seen 10), the Commission requested “the opportunity to formulate questions, verbally or in writing, insofar as these are relevant and reasonable, to two of the expert witnesses offered by t [he] representatives whose statements are related both to the Inter-American public order and to the topic of the expert reports offered by the Inter-American Commission.” In this regard, it pointed out that two of the aspects identified as being related to the Inter-American public order have to do, on the one hand, with the General Amnesty Law for the Consolidation of Peace in light of the international standards on the matter, and on the other, with the conceptual and technical elements to be taken into account in order to ensure that the practice of exhumation of remains in cases such as this contributes to the determination of the truth and to justice. Regarding these two topics, the Commission explained that these were offered as the object of the expert opinions to be presented by Michael Reed Hurtado and Tal Linda Ileen Simmons. For the Commission, the expert opinion of Salvador Eduardo Menéndez Leal as well as the joint expert opinion of Luis Fondebrider, Silvana Turner and Mercedes C. Doretti, offered by the representatives, are related respectively to these two questions.

28. The Commission added that “[a]lthough the focus of the two expert opinions proposed by the representatives is limited to the situation of impunity in El Salvador and the exhumations conducted in this specific case, the object also includes an analysis of the measures to be adopted in future to overcome the problems identified in these two spheres [, that] necessarily involves the applicable international standards which will be discussed by the expert witnesses offered by the Commission; the decision issued by the Court in this regard will have an impact on the Inter-American public order, since these matters continue to pose a challenge for many countries of the region, which continue to search for ways to address the legal and *de facto* obstacles to doing justice in the wake of generalized and systematic situations, and also [face] technical limitations in carrying out forensic tests in large-scale cases such as this.”

29. Regarding the Commission’s aforementioned request, the President recalls the provisions of the Rules regarding the reception of statements proposed by the Commission, and those concerning its authority to question witnesses offered by the other parties. In particular, it is pertinent to recall the provisions of Article 50.5 of the Rules, which establish that “[t]he alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State may submit questions in writing for the declarants offered by the opposing party and, if applicable, by the Commission, who have been convened by the Court to render their statements through affidavits.” This should be taken in conjunction with Article 52.3 of the Rules, according to which the Commission may question expert witnesses proposed by the other parties, “if authorized by the Court upon receiving a well-founded request, 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 with the Inter-American public order and with the topic discussed by an expert witness that it has proposed, so that the Court or its Presidency may properly assess the request and, if appropriate, authorize the Commission to proceed with its questioning.⁸

⁸ Cf. *Case of Contreras et al v. El Salvador*. Order of the President of the Inter-American Court of Human Rights of April 14, 2011, Considering paragraph 25, and *Case of Castillo González et al. v. Venezuela*. Order of the President of the Inter-American Court of Human Rights of January 31, 2012, Considering paragraph 21.

30. As to the connection between the joint expert opinion of Luis Fondebrider, Silvana Turner and Mercedes C. Doretti and the expert opinion of Tal Linda Ileen Simmons, the President emphasizes the considerations regarding the object of the expert opinion offered by the Commission inasmuch as it concerns the Inter-American public order (*supra* Considering paragraph 21). From a comparison of the objects of the two expert opinions, it may be concluded that both analyze relevant aspects of the standards for carrying out exhumations in cases of human rights violations and, therefore, pursuant to Articles 50.5 and 52.3, the Court accepts that the Commission may question the expert witnesses Luis Fondebrider, Silvana Turner and Mercedes C. Doretti, whose joint opinion shall be received by affidavit, given that these questions could affect the Inter-American public order.

31. Regarding the connection between the proposed expert opinion of Salvador Eduardo Menéndez Leal and the object of the expert opinion of Michael Reed Hurtado, the President refers to the considerations stated previously in ruling on the inadmissibility of this last expert opinion, inasmuch as it is not clear that its object would significantly affect the Inter-American public order (*supra* Considering paragraph 19), and therefore he considers that it is not appropriate to analyze this point of the Commission's request.

e) Application of the Victims' Legal Assistance Fund

32. The Order adopted by this Presidency on December 1, 2011 (*supra* Having seen 4), declared admissible the request submitted by the alleged victims, through their representatives, to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court of Human rights, so that the necessary financial assistance would be granted for the presentation of a maximum of four testimonies, either by affidavit or at a hearing.

33. Having determined that the statements offered by the representatives shall be received by the Court and the means by which these shall be obtained, it is now appropriate to determine the specific amount, recipients and purpose of said assistance. As stated in the aforementioned Order of the President, in this case, the financial assistance necessary shall be granted for the presentation of a maximum of four testimonies.

34. Accordingly, the President orders that financial assistance be granted to cover the travel and accommodation expenses of Mrs. Dorila Márquez de Márquez, María del Rosario López Sánchez, María Margarita Chicas Márquez and María Sol Yáñez de la Cruz so that they may appear before the Court and render their testimonies at the public hearing to be held in the city of Guayaquil, Republic of the Ecuador. As to the four persons appearing at the public hearing, the Court shall take the appropriate and necessary steps to cover the costs of travel, board and lodging for these declarants with resources from the Victims' Assistance Fund.

35. As required by Article 4 of the Court's Rules for the Operation of the Victims' Legal Assistance Fund (hereinafter the "Rules of the Assistance Fund"), the Secretariat shall open a file of expenditures for accounting purposes, which shall contain a record of each expenditure made from said Fund.

36. Finally, the President recalls that, pursuant to Article 5 of the Rules of the Fund, the Court shall inform the respondent State of the expenditures made from the Victims' Legal Assistance Fund, so that the State may submit its observations, if it so wishes, within the established time limit.

f) Final oral and written arguments and observations

37. The representatives and the State may submit to the Court their final oral arguments regarding the merits and possible reparations and costs in this case, respectively, once the statements and expert opinions have been received. As provided in Article 51.8 of the Rules, once the arguments have concluded the Inter-American Commission shall present its final oral observations.

38. Pursuant 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, regarding the merits and possible reparations and costs, within the period specified in operative paragraph 13 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 to 58 and 60 of the Court's Rules of Procedure, and in the exercise of his authority in relation to the Court's Victims' Legal Assistance Fund,

DECIDES:

1. To require, for the reasons stated in the instant Order (*supra* Considering paragraphs 24 and 25), in accordance with the principle of procedural economy and in the exercise of the authority granted under Article 50.1 of the Rules of the Court, that the following persons render statements before a notary public (affidavit):

A) Declarants proposed by the representatives

- 1) *Juan Bautista Márquez Argueta*, who will testify on the facts of the alleged massacre and its consequences for him; the steps taken to obtain justice and the response obtained from the authorities; the consequences that the alleged lack of justice has had for him and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of his rights.
- 2) *Sofía Romero Pereira*, who will testify on the facts of the alleged massacre, her alleged situation of displacement as a result of this event and how it has affected her; the consequences of the alleged lack of justice for her and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.

- 3) *Sonia Tobar*, who will testify on the facts of the alleged massacre, her alleged situation of displacement as a result of this event and how this has affected her; the consequences of the alleged lack of justice for her and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.
- 4) *Antonia Guevara Díaz*, who will testify on the facts of the alleged massacre and its effects; the consequences of the alleged lack of justice for her and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.
- 5) *Juan Antonio Pereira Vigil*, who will testify on the facts of the alleged massacre and its effects; the consequences of the alleged lack of justice for him and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of his rights.
- 6) *Eduardo Conception Argueta Márquez*, who will testify on the facts of the alleged massacre and its effects; the consequences of the alleged lack of justice for him and other alleged victims; the measures that the State should adopt in reparation for the alleged violations of his rights.
- 7) *Saturnino Argueta Claros*, who will testify on the facts of the alleged massacre and its effects; the consequences of the alleged lack of justice for him and other alleged victims; the measures that the State should adopt in reparation for the alleged violations of his rights.
- 8) *José Pablo Díaz Portillo*, who will testify on the facts of the alleged massacre and its effects; the consequences of the alleged lack of justice for him and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of his rights.

B) Expert witnesses

Proposed by the Inter-American Commission:

- 1) *Tal Linda Ileen Simmons*, Professor of forensic anthropology and archaeology in the United Kingdom, who will offer an expert opinion on the internationally accepted parameters that must be observed in conducting exhumations in cases of human rights violations, as well as an analysis of the exhumations conducted internally in the light of these standards.

Proposed by the representatives:

- 2) *Luis Fondebrider, Silvana Turner and Mercedes C. Doretti*, forensic anthropologists and members of the Argentinean Forensic Anthropology Team (EAAF for its Spanish acronym), who will offer a joint expert opinion on the measures that the State of El Salvador should adopt to ensure the recovery of the remains that have not yet been

located and the identification of all victims of the massacre, having regard to the intervention of the Argentinean Forensic Anthropology Team in the exhumation work carried out in the case of the massacres of El Mozote and surrounding areas, the alleged difficulties faced in carrying out these exhumations, the relations with the authorities in charge of the investigation, the identification of the victims and the exercise of their work in general.

- 3) *Father David Scott Blanchard*, a priest and anthropologist, who will offer an expert opinion on the phenomenon of forced displacement in El Salvador and how this has affected the presumed surviving victims of the alleged Massacres of El Mozote and surrounding areas, and the measures that the Salvadoran state should adopt to repair the alleged damage caused to the alleged displaced victims.

2. To require the representatives, the State and the Commission to submit, if deemed pertinent, and where applicable, within the non-renewable term that expires on March 30, 2012, any questions that they consider appropriate to formulate through the Inter-American Court to the declarants and expert witnesses named in operative paragraph 1 of this Order. The testimonies and expert opinions required in operative paragraph 1, shall be submitted by April 18, 2012 at the latest.

3. To require the representatives and the Commission to coordinate and carry out the necessary procedures so that, once the questions of the parties have been received, the proposed declarants and expert witnesses may include the respective answers in their affidavits, in accordance with Considering paragraph 25 of this Order.

4. To require the Secretariat of the Inter-American Court, once the testimonies and expert opinions required in operative paragraph 1 have been received, to transmit these to the other parties so that the representatives and the State may submit their observations to those statements and expert opinions with their final arguments, at the latest.

5. To summon the representatives, the State of El Salvador and the Inter-American Commission to a public hearing to be held during the 45th Extraordinary Period of Sessions, in Guayaquil, Ecuador, on Monday April 23, 2012, from 09:00 hours, in order to receive their final oral arguments and final oral observations, respectively, regarding the merits and possible reparations and costs, as well as the testimonies of the following persons:

A) *Declarants proposed by the representatives*

- 1) *Dorila Márquez of Márquez*, who will testify on the facts of the alleged massacre and its consequences; the steps she has taken to obtain justice and the response received from the authorities; the consequences that the alleged lack of justice has had for her and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.
- 2) *María del Rosario López Sánchez*, who will testify on the facts of the alleged massacre and its consequences; the consequences that the alleged lack of justice has had for her and other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.

- 3) *María Margarita Chicas Márquez*, who will testify on the facts of the alleged massacre and its consequences; the consequences that the alleged lack of justice has had for her and for other alleged victims; the measures that the State should adopt in reparation for the alleged violations of her rights.

B) *Expert witnesses proposed by the representatives*

- 1) *Salvador Eduardo Menéndez Leal*, lawyer, Deputy Attorney for the Defense of Human Rights of El Salvador since August 2007, who will testify on the General Amnesty Law for the Consolidation of Peace in El Salvador and its effects on the investigation of serious human rights violations in El Salvador, as well as on the rulings of the Salvadoran courts in this regard, and the measures that the Salvadoran State must adopt to guarantee access to justice in such cases.
 - 2) *María Sol Yáñez de la Cruz*, Professor and researcher of the Department of Psychology of the Universidad Centroamericana "José Simeón Canas" (UCA), who will offer an expert opinion on the psychosocial effects of the loss of basic assets and property and forced displacement on the alleged victims in the instant case; the alleged damage caused to the presumed surviving victims and to the families of the alleged victims who died as a result of the alleged impunity surrounding the events of this case; and the measures that the Salvadoran State should adopt to repair the alleged damage caused to the presumed victims and their families.
6. To require the Republic of El Salvador to facilitate the departure and entry into its territory of the declarants, if they are resident or present therein, who are summoned by this Order to testify at the public hearing on the merits and possible reparations and costs in this case, pursuant to Article 26.1 of the Rules of the Court.
7. To request the cooperation of the Republic of Ecuador, pursuant to Article 26, clauses 1 and 3 of the Rules, in order to hold the public hearing on the merits and possible reparations and costs in that country, convened through this Order, and to facilitate the entry into and departure from its territory of the persons summoned to give evidence before the Inter-American Court at said hearing and those who shall represent the Inter-American Commission, the State and the alleged victims during the hearing. For this purpose, the Secretariat shall notify the present Order to the Republic of Ecuador.
8. To require the Inter-American Commission and the representatives to notify the present Order to the persons they have proposed and who have been summoned to testify, pursuant to Articles 50.2 and 50.4 of the Rules.
9. To inform the Inter-American Commission and the representatives that they must cover the expenses incurred in offering or rendering the evidence proposed by them, pursuant to Article 60 of the Rules, without prejudice to the provisions contained in Considering paragraph 34 of this Order.
10. To require the Commission and the representatives to inform the persons summoned by the Court to render a statement that, pursuant to Article 54 of the Rules, the Court shall

bring to the State's attention any case in which a person summoned to appear or testify before this Court fails to appear or refuses to render a statement without legitimate cause or when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.

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

12. To order the Secretariat of the Court, according to the terms of Article 55.3 of the Rules, to indicate to the Inter-American Commission, the representatives and the State, as soon as possible, the electronic link to the recording of the public hearing on the merits and possible reparations and costs in the instant case.

13. To inform the representatives, the State and the Inter-American Commission that the time limit established to present their final written arguments and final written observations, respectively, regarding the merits and possible reparations and legal costs in this case expires on until May 23, 2012. This term is non-renewable and is unrelated to the indications concerning the link to the recording of the public hearing.

14. To order the Secretariat of the Court, pursuant to Article 4 of the Rules for the Operation of the Victims' Legal Assistance Fund, to open a file of costs, documenting each of the expenditures made from the Victims' Legal Assistance Fund.

15. To order the Secretariat of the Inter-American Court to notify this Order to the Inter-American Commission on Human rights, the representatives of the alleged victims, the Republic of El Salvador and the Republic of Ecuador.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary