

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

OF DECEMBER 20, 2012

CASE OF LIAKAT ALI ALIBUX VS. SURINAME

HAVING SEEN:

1. The application submitted 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", "the Court," or "the Tribunal") on January 20 and February 7, 2012, in which it offered one expert testimony.

2. The communications of March 7, 2012, by which the Secretariat informed the State of Suriname (hereinafter "Suriname" or "the State") and the alleged victim of the application submitted by the Inter-American Commission and the initiation of proceedings in the present case.

3. The communication of March 27, 2012, by which the alleged victim declared that he wished to make use of the Victim's Legal Assistance Fund. Additionally, the communication of March 30, 2012, by which the Secretariat informed the alleged victim that according to Article 2 of the Fund's Rules of Procedure, the appropriate moment to inform the Court and present the necessary justification and evidence regarding the use of the Fund is upon submission of the brief containing pleadings, motions and evidence.

4. The communication of June 21, 2012, by which the Secretariat noted that the alleged victim did not submit his brief containing pleadings, motions and evidence and that he adhered to the brief submitted by the Commission and the requests and reparations included therein.

5. The communication of July 20, 2012, by which the Secretariat answered the question formulated by the alleged victim regarding the request to the Court that an Inter-American Defender be assigned to him. The Secretariat noted that in accordance with Article 37 of its Rules of Procedure, alleged victims who lack economic means or legal representation may request assistance of the Inter-American Public Defender; however this does not preclude the possibility that the alleged victim obtain his own legal representation to act before the Court at the current stage of proceedings.

6. The communication of August 14, 2012, by which the alleged victim provided the Court with his legal representative's contact information.

7. The communication of August 21, 2012, by which the Illustrious State of Suriname submitted its brief on preliminary objection and answer to the brief of submission of the case, without offering any testimonial evidence.

8. The communications of September 20 and 26, 2012, by which the Representative and the Commission respectively submitted their observations on the preliminary objection posed by the State.

9. The communication of October 2, 2012, by which the Secretariat, following the instructions of the President of the Court, informed the parties that the Tribunal will only consider the arguments submitted by the representative related to the preliminary objection submitted by the State.

10. The communication of October 19, 2012, by which the Secretariat required the parties to submit their definitive list of declarants, in accordance with article 46(1) of the Inter-American Court of Human Rights Rules of Procedure.

11. The communication of November 1, 2012, by which the Secretariat informed the alleged victim that given the fact that he had not submitted the brief containing pleadings, motion and evidence, he was precluded from submitting a definitive list of declarants.

12. The communication of November 2, 2012, by which the Representative withdrew submission of a list of declarants taking into consideration the communication of the Secretariat of November 1, 2012 (*supra* Having Seen para. 11).

13. The communications of November 5, 2012, by which the State of Suriname submitted its definitive list of witnesses and proposed that two declarations be rendered through sworn written statement (*affidavits*) and by which the Inter-American Commission reiterated its offering of one expert opinion.

14. The communication of November 9, 2012, in which the Secretariat noted that the State did not submit its list of declarants as required in Article 41(1)(c), that is, at the appropriate procedural moment (in its brief on the preliminary objection and answer to the brief of submission of the case) and, in addition, noted that the State did not indicate the object of the witness statements. Additionally, following the instructions of the President, the Secretariat informed the parties that they had until November 20, 2012, to submit observations to the definitive lists of declarants.

15. The communication of November 20, 2012, by which the Inter-American Commission submitted its objections to the list of declarants presented by the State.

CONSIDERING THAT:

1. The admission and procedure for taking evidence is governed by articles 35(1) (f), 40(2)(c), 41(1)(c), 46, 50, 57, and 58 of the Rules of Procedure.

2. The Inter-American Commission offered the expert testimony of Mr. Héctor Olásolo; the representative did not submit a list of declarants (*supra* Having Seen

para. 12); and the State offered the testimony of Mr. S. Punwasi and Mr. R.R. Venitiaan extemporaneously (*supra* Having Seen para. 14).

3. The Inter-American Commission, the representative, and the State were given the right of defense with regard to the evidentiary proposals made by each of the parties at different procedural junctures (*supra* Having Seen paras. 10 to 15)

4. The Inter-American Commission made observations to the list of declarants submitted by the State (*supra* Having Seen para. 15). Neither the representatives nor the State made observations or objections to the Commission's definite list of declarants (*supra* Having Seen paras. 6 to 12).

5. In this Order, the President will consider: a) the admissibility of the expert evidence offered by the Inter-American Commission; b) the admissibility of the statement by the alleged victim; c) the admissibility of the list of witnesses proposed by the State; d) the form in which declarations and expert evidence will be received, if applicable, and e) the oral and written allegations and final observations.

A. Expert evidence offered by the Inter-American Commission

6. According to Article 35(1)(f) of the Rules of Procedure, "the possible appointment of expert witnesses" may be made by the Inter-American Commission "when the Inter-American public order of human rights is affected in a significant manner," the object of which must be adequately founded. This provision means that the appointment of expert witnesses by the Commission is an exceptional opportunity that is subject to a requirement that is not satisfied by the mere fact that the item of evidence to be received 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 falls upon the Commission to show that such a situation exists.¹

7. In its communication of January 20, 2012, the Inter-American Commission offered the expert testimony of Mr. Héctor Olásolo, regarding the scope of the principle of *non ex post facto* application of criminal law under international human rights law. The testimony was to be rendered before the Court during the public hearing in this case.

8. Neither the State nor the representative submitted observations to the expert testimony offered by the Commission.

9. The Commission argued that the expert testimony relates to issues of Inter-American public interest because it represents an opportunity for the Court to rule on the predictability of criminal prosecution against the backdrop of the American Convention. Furthermore, the case raises a new aspect of law in terms of the scope of the provision on freedom from *ex post facto* laws. The Commission also considered that in the present case the violation of the right to fair trial and judicial protection stemmed from the enforcement of the rule establishing the prosecution of senior officials in a single instance and the failure to implement the constitutional norm governing constitutional control which mandated the creation of a Constitutional Court.

¹ Cf. *Case of Pedro Miguel Vera Vera et al V. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering Clause nine, and *Case of Artavia Murillo et al ("In Vitro fertilization") V. Costa Rica*. Order of the President of the Inter-American Court of Human Rights of August 6, 2012, Considering Clause twenty four.

10. The President finds that the Commission did not state how the object of the expert testimony it proposed is relevant to the Inter-American public order, as required in Article 35(1)(f) of the Rules of Procedure, as it is not clear from the Commission's arguments how situations occurring in other States parties may be affected. The President also considers that the jurisprudence of this Tribunal is well developed on the scope of constitutional control and the right to fair trial and judicial protection. Nevertheless, the President finds that the expert testimony of Mr. Olásolo would be useful and relevant for the resolution of the present case² with regard to the principle of *non ex post facto* application of the law, and thus considers it appropriate to receive his testimony under Article 50(1) of the Rules of Procedure, according to which the Court shall summon all those who deems appropriate to a hearing, if necessary. The expert opinion shall be assessed in timely fashion, within the context of the existing body of evidence, and on the basis of sound judgment. The President will determine the object of Mr. Olásolo's testimony, as well as the manner in which this evidence shall be rendered to the Court (*infra* Operative para. 5).

B. Alleged Victim's Declaration

11. The Court notes that the alleged victim was precluded from submitting a definitive list of declarants (*supra* Having Seen 11). Nevertheless, the President deems Mr. Liakat Ali Alibux's testimony on the criminal proceeding in which the alleged violation of his rights was allegedly committed to be useful and relevant to the resolution of the issues in this case. The Court recalls that the statements submitted by alleged victims and other persons with a direct interest in the case are useful, as they can provide more information regarding the alleged violations and their consequences.³ The President considers it fitting to receive his declaration, pursuant to Article 50(1) of the Rules of Procedure, according to which the Court shall summon all those who deems appropriate to a hearing, if necessary. The President will determine the object of Mr. Alibux's testimony, as well as the manner in which this evidence shall be rendered by the Court (*infra* Operative para. 5).

C. Witnesses Statements proposed by the State

12. The State offered the testimonies of Mr. S. Punwasi, acting as Procurator-General and of Mr. R.R. Venitiaan, former President of the Republic of Suriname, to be rendered through *affidavits*. The Commission stated that the list of declarants submitted by the State should be dismissed because it is time-barred and does not comply with the requirements set out in the Rules of Procedure.

13. The President finds that the State submitted its definitive list of declarants after it was time-barred, as those testimonies were not offered in its brief containing preliminary objections and the answer to the application, and given that the State did not include the object of those statements (*supra* Having Seen paras. 7 and 14). Nevertheless, the President deems Mr. S. Punwasi's testimony, acting as Procurator-General, on the application of domestic law in the procedural and substantial matters

² Cf. *Case of the "White Van" (Paniagua-Morales et al.) V. Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, para 81; *Case of DaCosta Cadogan v. Barbados*. Order of the President of Inter-American Court of Human Rights. Order of May 18, 2009, Operative para. 7.

³ Cf. *Case "Masacre de Pueblo Bello" V. Colombia*. Order of the President of the Inter-American Court of Human Rights of July 29 of 2005, Considering Clause seven, and *Case of "Masacres de el Mozote y lugares aledaños" V. El Salvador*, Order of the President of the Inter-American Court of Human Rights of March 22, 2012, Considering Clause nine.

related to the present controversy to be useful and relevant to the resolution of the case. The President considers it fitting to receive his declaration, pursuant to Article 50(1) of the Rules of Procedure and will determine the object of Mr. S. Punwasi's testimony, as well as the manner in which this evidence shall be rendered to the Court (*infra* Operative para. 1).

D. Receipt of the statements of the alleged victim and witness, and of the expert opinion

14. It is necessary to ensure the most complete presentation of the facts and arguments by the parties in order to appropriately resolve the issues in dispute, guaranteeing both the parties' right to defend their positions and the Tribunal's ability to adequately address the cases submitted to its consideration. Moreover, it is necessary to guarantee a reasonable term in the length of the proceeding, as required by the right to effective access to justice. Based on the foregoing, it is essential to receive the highest number of testimonies and expert opinions possible through *affidavits* and that the Court hear those alleged victims, witnesses, and expert witnesses whose direct statements are truly indispensable at the public hearing, taking into account the circumstances of the case and the object of the testimonies and expert opinions.

1. Statement to be rendered through affidavit

15. Taking into account Article 50(1) of the Rules of Procedure, the statements of the Inter-American Commission, the representative and the State, the object of the statements offered, as well as the principle of procedural economy, the President deems it pertinent to receive, through affidavit, the statement of Mr. S. Punwasi, proposed by the State and deemed appropriate by the President in accordance with Article 50(1) of the Rules of Procedure.

16. The President emphasizes that Article 50(5) of the Court's Rules of Procedure allows the alleged victims or their representatives and the respondent State to formulate questions in writing for the declarants summoned to render their statement through affidavits. Thus, the President proceeds to give the representative an opportunity to submit, if he wishes, questions for the declarant of the opposing party referred to in the above paragraph. Upon rendering his statement through affidavit, the witness must respond to those questions, unless the President decides otherwise. The corresponding time limits shall be stipulated in Operative paragraph two of this Order. The abovementioned statement shall be transmitted to the parties and the representative. In turn, the representative may submit observations to that statement within the time limit indicated in this Order (*infra* Operative para. 12). The evidentiary value of said statement shall be determined by the Tribunal in timely fashion, considering the points of view, if applicable, expressed by the State and the representatives in the exercise of their right to defense.

2. Statement and expert testimony to be received at the public hearing

17. The proceedings in the instant case are set for the oral phase to start as to the preliminary objection and possible merits, reparations, and legal costs, and thus the President deems pertinent to convene a public hearing for the purpose of receiving the statements of Mr. Liakat Ali Alibux, summoned to appear before the Court in application of Article 50(1) of the Rules of Procedure; and the expert testimony of Mr.

Héctor Olásolo, offered by the Commission and deemed useful by the President, in application of Article 50(1).

E. Final oral and written arguments and observations

18. Once the alleged victim and the expert witness have rendered their statements, the representative and the State may present before the Tribunal their final oral arguments regarding the preliminary objection, and possible merits, reparations, and legal costs in the instant case. As established in Article 51(8) of the Rules of Procedure, once the oral arguments have concluded, the Commission shall present its final oral observations.

19. According to Article 56 of the Rules of Procedure, the alleged victim or his representative, the State, and the Commission may submit their final written arguments and final written observations, respectively, in relation to the preliminary objection, and possible merits, reparations, and legal costs, within the term established in Operative Paragraph twelve of this Order.

NOW THEREFORE:

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

In accordance with Articles 24(1) and 25(2) of the Court's Statute and Articles 4, 15(1), 26, 31(2), 35(1), 40(2), 41(1), 45, 46, 50 to 58, and 60 of its Rules of Procedure,

DECIDES:

1. To require, for the reasons stated in this Order (*supra* Considering Clauses 12 to 16), in accordance to the principle of procedural economy, and pursuant to Article 50(1) of the Rules of Procedure, that the following person render his statement by *affidavit*:

A) Witness proposed by the State and deemed appropriate by the President

1) *Mr. S. Punwasi*, who will render a declaration on the application of the Criminal Code, the Code of Criminal Procedure, the Act in Indictment of Political Office Holders, and related norms at time of the facts, in the investigation, trial and final judgment of Mr. Alibux.

2. To require the representative to submit, within the non-renewable term expiring on January 11, 2013, the questions he seeks to ask through the Inter-American Court to the witness indicated in operative paragraph one of this Order. The statement required in operative paragraph one must be presented to the Tribunal by February 1, 2013, at the latest.

3. To require the State to coordinate and take the necessary actions for the proposed declarant to include, once the questions from the representative have been

received, the corresponding answers in his statement rendered through *affidavit*, in accordance with to Considering clauses 15 and 16 of this Order.

4. To require the Secretariat of the Inter-American Court, once the statements required in operative paragraph one have been received, to transmit them to the Inter-American Commission and the representative. If the representative deems it necessary, he may submit observations to those statements together with his final written arguments, at the latest.

5. To convene the Republic of Suriname, the representative of the alleged victim, and the Inter-American Commission on Human Rights to a public hearing to be held in San José, Costa Rica, during its 98th Regular Period of Sessions, on February 6, 2013, at 15:00, for the purpose of receiving final oral arguments and final oral observations, respectively, regarding the preliminary objection, and possible merits, reparations, and legal costs, as well as the statements of the following persons:

A) Alleged Victim summoned by the President and brought by the Representative

1) Liakat Ali Alibux, alleged victim, who will testify on the proceeding that led to his criminal conviction and the consequences thereof.

B) Expert Witness proposed by the Inter-American Commission

1) Héctor Olásolo, University Professor, who will testify on the scope of the principle of non-retroactivity of criminal law under international human rights law, and the backdrop of norms, including procedural rules, that could substantially affect the exercise of punitive power by the State; he will also analyze how this issue has been handled in other human rights protection systems, and testify as to the application of the predictability test in criminal prosecution.

6. To order the Republic of Suriname to facilitate the exit from and entrance into its territory of the declarant who has been summoned in this Order to render a statement at the public hearing in this case, if he resides therein, pursuant to Article 26(1) of the Court's Rules of Procedure.

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

8. To inform the Inter-American Commission, the State, and the representative that they must cover the costs generated by the production of the items of evidence they have offered, in accordance with Article 60 of the Rules of Procedure.

9. To require the Inter-American Commission, the State, and the representative to inform the persons summoned by the Court to render a statement that, in accordance with Article 54 of the Rules of Procedure, the Tribunal shall bring to the State's attention the cases in which the persons summoned to appear or declare before the Court fails to appear or refuses to render a statement without legitimate cause, or the cases in which, 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.

10. To inform the representative, the State, and the Inter-American Commission that once the statements are rendered at the public hearing, they shall present before the Tribunal their final oral arguments and final oral observations, respectively, to the preliminary objection, and possible merits, reparations, and legal costs in the instant case.

11. To order the Secretariat of the Court, in accordance with Article 55(3) of the Rules of Procedure, to provide the Inter-American Commission, the representative and the State with the link to the recording of the public hearing on the preliminary objection, and possible merits, reparations, and legal costs, as soon as possible.

12. To inform the representative, the State, and the Inter-American Commission that the time limit established for the submission of final written arguments and final written observations, respectively, as well as possible documents attached thereto, in relation to the preliminary objection, and possible merits, reparations, and legal costs in this case, expires on March 7, 2013. This term is non-renewable.

13. To require the Secretariat of the Court to serve notice of the present Order on the Inter-American Commission, the representative of the alleged victim, and the State of Suriname.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar