

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JANUARY 27, 2012
CASE OF PACHECO TERUEL *ET AL.* v. HONDURAS**

HAVING SEEN:

1. The brief submitting the case to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), presented by the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) on March 11, 2011, in which it offered two expert opinions and indicated their purpose, without identifying the persons proposed as expert witnesses, and requested the transfer, as pertinent, of three expert opinions provided in the case of *Servellón García et al. v. Honduras*.

2. The communication of March 25, 2011, in which, the Inter-American Commission indicated the names of the two experts who would provide the expert opinions offered in its brief submitting the case (*supra* having seen paragraph 1) and presented their *curricula vitae*. The Commission also indicated that it was forwarding a copy of the attachments to Merits Report 118/10, and of the file on the processing of the case before it.

3. The communication of August 15, 2011, in which the representatives of the presumed victims (hereinafter “the representatives”)¹ forwarded their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”) concerning this case and offered two statements and two expert opinions. The communications of August 17 and 22, 2011, forwarding the attachments to the pleadings and motions brief, and the *curricula vitae* of the proposed expert witnesses.

4. The brief answering the presentation of the case and with observations on the pleadings and motions brief (hereinafter “answering brief”), presented by the Republic of Honduras (hereinafter “the State of Honduras” or “the State”) on October 21, 2011, in which it offered the testimony of one witness.

5. The communication of December 9, 2011, in which, on the instructions of the President of the Inter-American Court (hereinafter “the President”), and in

¹ The presumed victims in this case appointed as their representatives: CARITAS San Pedro Sula Diocese, the *Equipo de Reflexión, Investigación y Comunicación* (ERIC-SJ [[Reflection, Research and Communication Team] and the *Pastoral Penitenciaria* [Prison Pastoral Service].

accordance with Article 46(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), the Secretariat of the Court (hereinafter "the Secretariat") asked the parties to forward, by December 16, 2011, at the latest, their respective final list of deponents (hereinafter "final list") and that, based on procedural economy, they indicate which of the deponents could provide their testimony or expert opinion by affidavit.

6. The brief of December 14, 2011, in which the Commission presented its final list, confirmed the offer of two expert opinions, and indicated their implications for inter-American public order.

7. The brief of December 15, 2011, in which the State forwarded its final list, reiterated its offer of one testimonial statement, and indicated that the said evidence could be provided by affidavit.

8. The brief of December 16, 2011, in which the representatives presented their final list, confirmed the offer of two statements by presumed victims and two expert opinions, and asked the Court to admit this evidence at a public hearing. In addition, the representatives offered, for the first time, the testimony of 13 persons.

9. The note of December 19, 2011, in which the Secretariat, in keeping with Article 46 of the Rules of Procedure, granted the Commission, the representatives, and the State until January 6, 2012, at the latest, to forward any observations they considered pertinent on the final lists that had been presented.

10. The brief of December 22, 2012, in which the Commission indicated that it had no observations to make on the final lists of the State and the representatives. Nevertheless, it asked to be able to question one expert witness proposed by the representatives.

11. The brief of January 6, 2012, in which the State indicated that it had no observations to make on the final list sent by the Commission and presented objections on some of the witnesses proposed by the representatives.

12. The representatives did not forward observations on the final lists.

CONSIDERING THAT:

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

2. The Commission, the representatives and the State have been granted the right of defense in relation to the probative elements offered in the brief submitting the case, the pleadings and motions brief, and the answering brief, as well as in the final lists of deponents (*supra* having seen paragraphs 5 and 9).

A) Expert evidence offered by the Inter-American Commission

3. 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," and the grounds and purpose of the expert opinions must be adequately substantiated. The meaning of this provision is that the appointment of expert witnesses by the Commission is exceptional, subject to the said requirement, which is not met merely because the evidence that it is proposed to provide is related to an alleged human rights violation. In other words, the offer of expert evidence must be based on "the inter-American public order of human rights [being] affected in a significant manner," and the Commission must substantiate this situation.²

4. In the instant case, the Commission has offered two expert opinions: (i) that of Marco A. Canteo, Executive Director of the Institute for Comparative Studies in Criminal Sciences of Guatemala, the purpose of which is "the amendments made to the definition of crimes of unlawful association in Honduras and Central America, a civil safety policy designed to combat the gangs or *maras*," and (ii) that of Mario Luis Coriolano, Vice Chairperson of the United Nations Subcommittee on Prevention of Torture, the purpose of which is "the situation of the Honduran prison system and the measures adopted by the State to deal with situations such as those that led to the facts of this case."

5. The State and the representatives did not present objections on the expert opinions of the Inter-American Commission.

6. Regarding the relationship of the purpose of the expert opinion of Marco A. Canteo to the inter-American public order of human rights, when submitting the case, the Commission indicated that "this case is part of the overall context of the public safety policies and prison policies aimed at combating the criminal organizations known as *maras*," and added that "the situations reported in the present case are common to other Central American countries such as El Salvador and Guatemala."

7. Given the proposed purpose of Mr. Canteo's expert opinion, the President notes that it transcends the interest and purpose of the instant case and deals with aspects that may have an impact on phenomena and events that have occurred in other States Parties to the Convention. Consequently, he finds it pertinent that the Court receive the expert opinion of Marco A. Canteo by affidavit, in keeping with the purpose and method determined in the operative paragraphs of this Order (*infra* operative paragraph 1(A)). The usefulness of this expert opinion will be assessed at the appropriate opportunity, in the context of the existing body of evidence, and according to the rules of sound judicial discretion.

8. With regard to the relationship of the purpose of the expert opinion of Mario Luis Coriolano³ to the inter-American public order of human rights, the Commission explained that the said expert would provide an expert opinion on "the situation of

² 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, ninth considering paragraph; and *Case of Néstor José and Luis Uzcátegui et al. v. Venezuela*. Order of the President of the Inter-American Court of Human Rights of November 3, 2011, twenty-fourth considering paragraph.

³ Mario Coriolano has been a member of the Subcommittee on Prevention of Torture since 2006 and has been its Vice Chairperson since 2009. He has expertise in the area of detention conditions and prison systems, so that his expert opinion could be extremely useful for this case. In addition, both the representatives and the Commission used reports on torture produced by the Subcommittee to prove the structural flaws in the Honduran prison system.

the Honduran prison system,” and the measures that the State is adopting to deal with “situations such as those that led to the events of this case.” In its final list of witnesses, the Commission indicated that the said expert opinion “would deal with matters of inter-American public interest related to international standards for prison systems and structural flaws as regards safety.”

9. The President notes that, as initially described by the Commission, the purpose did not constitute a matter of inter-American public interest. However, the Commission later specified its implications as regards international standards for prison systems and safety. Consequently, the President confirms that this purpose transcends the instant case, since it could have implications for other States Parties to the Convention, and has become a matter that is relevant to inter-American public order. Hence, the expert opinion of Mario Luis Coriolano is admitted, as pertinent.

B) Testimonial evidence offered by the representatives

10. At the appropriate time, the representatives offered the testimony of María Oneyda Estrada Aguilar and Sandra Lorena Ramos Cárcamo, next of kin of individuals who died in the fire, to be given at the public hearing, and this was not contested. The President considers it desirable to receive this evidence, so that the Court may assess its value at the appropriate procedural opportunity, in the context of the existing body of evidence and according to the rules of sound judicial discretion. The purpose of the testimony and the way in which it will be received are determined in the operative paragraphs of this Order (*infra* operative paragraph 15).

11. In addition, in their final list, the representatives offered, *inter alia*, the testimony by affidavit of Abencio Reyes, Aida Rodríguez, Doris Esperanza Paz, Manuel Armando Fuentes, Marlene Ardón Santos, Marta Elena Suazo, Olga María Santos, Isis Perdomo, Rómulo Emiliani and Violeta María Discua; their testimony had been offered opportunely in the pleadings and motions brief as documentary evidence in audio form. In this regard, the State asked the Court to “receive the said testimony by the appearance of the witnesses in person before [...] notary public, since [...] the representatives [...] indicate that their testimony has been recorded; [therefore, it] ask[ed] that these statements be received in the procedural form required in the Court’s Rules of Procedure [...].” The State also asked that the number of deponents who would testify on the same purpose be reduced to seven. The Commission did not present observations on the final list.

12. In this regard, the President finds that the said statements (*supra* considering paragraph 11) are useful for the analysis of the eventual merits of this case. Therefore, he requires that these statements be replicated before notary public in the form of affidavits with the purpose indicated in the pleadings and motions brief. The Court will assess the value of these statements at the appropriate opportunity, in the context of the body of evidence and according to the rules of sound judicial discretion.

13. In addition, in their final list, the representatives offered the testimony of Brenda Elena Leiva, and withdrew the offer of Virginia Alfaro. In this regard, the State asked the Court to reject the testimony of Brenda Elena Leiva because it was time-barred, and also the testimony of the priest, Roberto D. Voss (offered as an audio recording in the pleadings and motions brief), based on lack of probative coherence and pertinence, because it deals with “the structural defects of the prison in El Progreso.”

14. Regarding the testimony of Brenda Elena Leiva, offered for the first time in the representatives' final list, the President rejects it because it is time-barred. As for the testimony of Roberto D. Voss, based on the State's observations, the President rejects it because it refers to structural defects in a prison other than the one where the events of this case occurred. Lastly, the President accepts the withdrawal of the testimony of Virginia Alfaro "because she has left the country permanently."

C) Method of receiving the testimony and expert opinions that have been admitted

15. It is necessary to ensure that the truth be known and also the most extensive presentation of the facts and arguments by the parties on everything that is pertinent for deciding the matters in dispute, guaranteeing both the latter's right to defend their respective positions and also the Court's ability to give adequate attention to the cases submitted to its consideration, taking into account that the number of these cases has increased significantly and is growing constantly. It must also be ensured that this attention is given within a reasonable time, as required by effective access to justice. Consequently, it is necessary to receive the greatest possible number of statements by affidavit, and to hear the witnesses and expert witnesses whose direct testimony is truly essential at the public hearing, taking into account the circumstances of the case and the purpose of the testimony and expert opinions.

C.1) Testimony and expert opinions to be provided by affidavit

16. Bearing in mind the provisions of Article 50(1) of the Rules of Procedure, the purpose of the testimony and expert opinions offered and their relationship to the facts of the case, as well as the principle of procedural economy, the President finds it desirable to receive, by affidavit, the testimony of: (i) Marco A. Canteo, expert witness proposed by the Inter-American Commission; (ii) Roy Murillo, expert witness proposed by the representatives, and (iii) Renán David Galo Meza, witness offered by the State. In addition, the reproduction of the testimony of Abencio Reyes, Aida Rodríguez, Doris Esperanza Paz, Manuel Armando Fuentes, Marlene Ardón Santos, Marta Elena Suazo, Olga María Santos, Isis Perdomo, Rómulo Emiliani and Violeta María Discua will be received by affidavit.

17. The President emphasizes that Article 50(5) of the Court's Rules of Procedure applicable to this case establish that the presumed victims or their representatives and the defendant State may provide a list of questions for those persons summoned to testify by affidavit.

18. In application of the provisions of the said article, the President proceeds to grant the representatives and the State the opportunity to submit, if they so wish, any questions they consider pertinent to the deponents referred to in considering paragraph 16. When preparing their affidavits, the deponents must answer these questions, unless the President decides otherwise. The corresponding time frames will be determined below (*infra* operative paragraph 2) of this Order. The said testimony will be forwarded to the Commission, the State and the representatives. The State and the representatives may present any observations they consider pertinent within the time frame indicated in the operative paragraphs of this Order (*infra* operative paragraph 4). The Court will determine opportunely the probative value of the said testimony, taking into account the points of view, if any, expressed by the parties in exercise of their right of defense.

C.2) Testimony and expert opinions to be received at a hearing

19. The instant case is ready for the oral proceedings on merits and eventual reparations and costs; therefore, the President finds it pertinent to convene a public hearing to receive the testimony of: María Oneyda Estrada Aguilar and Sandra Lorena Ramos Cárcamo, offered by the representatives, and the expert opinions of Celso Alvarado, offered by the representatives, and Mario Luis Coriolano, proposed by the Commission.

C.3) The Commission's request to question an expert witness offered by the representatives

20. The Commission requested "authorization to question expert witness Roy Murillo, proposed by the representatives," whose expert opinion will deal with the Honduran prison system and its incompatibility with international standards, "on those issues that are directly related to the purpose of the expert opinion of Mario Coriolano." In this regard, the Commission indicated that, "in particular, Mr. Coriolano's expert opinion will deal with issues of inter-American public interest relating to international standards for prison systems, and structural defects in relation to safety matters, which could be complementary to the expert opinion of Roy Murillo, as regards their application at the domestic level."

21. With regard to the Commission's request, the President recalls the provisions of the Court's Rules of Procedure relating to the reception of testimony proposed by the Commission, as well as with regard to its ability to question the deponents offered by the other parties.⁴

22. In particular, it is pertinent to recall the provisions of Article 50(5) of the Rules of Procedure, which establish that "[t]he alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State may formulate 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 by affidavit." This article should be read in conjunction with Article 52(3) of the Rules of Procedure, which establishes the possibility that the Commission question the expert witnesses presented by the other parties, "if authorized by the Court upon receiving a well-grounded request therefor, when the Inter-American public order of human rights is affected in a significant manner and the statement in question regards a topic included in the statement of an expert witness offered by the Commission."

23. The President notes that the purpose of Mr. Murillo's expert opinion includes aspects that may have implications for phenomena and incidents that have occurred in other States Parties to the Convention with regard to international standards for penitentiary systems; in other words, matters that are relevant to inter-American public order. Consequently, the President finds it appropriate to grant the Commission the possibility of questioning expert witness Roy Murillo on the aspects that it has specifically indicated.

⁴ Cf. Case of González Medina and Family Members v. Dominican Republic. Order of the President of the Inter-American Court of Human Rights of June 3, 2011, forty-fourth considering paragraph.

D) Request to incorporate documentary elements

24. The Commission asked the Court to transfer the three expert opinions provided in the case of *Servellón García et al. v. Honduras*, by: Leo Valladares Lanza, on “the [alleged] context of violence towards children and adolescents in Honduras, the impunity in the country, and the treatment of persons deprived of liberty”; Carlos Tiffer Sotomayor, on “the [alleged] context of violence towards children and adolescents in Central America, and especially in Honduras, [and] the inappropriateness of the legal reforms that have been implemented to deal with the phenomenon of the *maras*,”; and Reina Auxiliadora Rivera Joya, on “the [alleged] situation of violence in which street children, youth in conflict with the law, and members of the *maras* are immersed, as well as on the treatment that these young people receive from the State authorities, including arbitrary arrest and execution,” and on “the procedural practices when prosecuting the *maras* and [...] the [supposed] practice of torture at the time of the facts, and the general situation of impunity that exists in the country in relation to these offenses.” The Commission did not explain the relevance of these expert opinions in the instant case.

25. Neither the representatives nor the State presented any observations in this regard.

26. The Court has indicated previously, with regard to the reception and assessment of evidence, that the proceedings before it are not subject to the same formalities as domestic judicial proceedings, and that the incorporation of certain elements into the body of evidence must be made paying special attention to the circumstances of the specific case and bearing in mind the limits imposed by respect for legal certainty and the procedural balance of the parties.⁵ Based on the principle of procedural economy and promptness, the President finds it appropriate to incorporate into the body of evidence in the instant case, as pertinent, the expert opinions provided by Carlos Tiffer Sotomayor and Reina Auxiliadora Rivera Joya in the case of *Servellón García et al. v. Honduras*, because they could be useful for deciding the case.⁶ Since this is documentary evidence, the parties may refer to the said opinions in their final arguments. The President does not find it necessary to incorporate the expert opinion of Leo Valladares which focuses on aspects, such as the situation of violence towards children and adolescents in Honduras, that are not specifically related to the context of this case.

E) Final oral and written arguments and observations

27. The representatives and the State may each submit to the Court their final oral arguments on the merits and eventual reparations in this case following the testimony provided by the witnesses and expert witnesses. As established in Article 51(8) of the Rules of Procedure, once the said arguments have concluded, the Inter-American Commission will present its final oral observations.

⁵ Cf. *Case of Carpio Nicolle et al. v. Guatemala*. Merits, reparations and costs. Judgment of November 22, 2004. Series C. 117, para. 55; *Case of Tiu Tojin v. Guatemala*. Order of the President of the Court of March 14, 2008, ninth considering paragraph, and *Case of Néstor José and Luis Uzcátegui et al. v. Venezuela*. Order of the President of the Court of November 3, 2011, forty-sixth considering paragraph.

⁶ Cf. *Case of García Asto and Ramírez Rojas v. Peru*. Order of the President of the Court of March 18, 2005, seventh to tenth considering paragraphs, and *Case of Néstor José and Luis Uzcátegui et al. v. Venezuela*. *supra* note 5, forty-sixth considering paragraph.

28. In accordance with Article 56 of the Rules of Procedure, the representatives and the State may present their final written arguments, and the Commission its final written observations within the time frame established in the operative paragraphs of this Order.

THEREFORE:

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

in accordance with Articles 24(1) and 25(2) of the Statute of the Court, and with Articles 4, 15(1), 26(1), 31(2), 45, 46, 47, 50 to 56 and 60 of the Court's Rules of Procedure,

DECIDES:

1. To require, for the reasons set out in this Order, based on the principle of procedural economy and in exercise of the authority granted to him by Article 50(1) of the Court's Rules of Procedure, the following persons to provide their testimony by affidavit:

A) Witness offered by the State

Renán David Galo Meza, Head of the Division for the Prevention and Analysis of *Maras* and Gangs of the National Criminal Investigations Directorate, who will testify on the extreme rivalries that exist among the members of the MS-13 and 18 *maras* or gangs.

B) Expert witness offered by the Commission

Marco A. Canteo, Guatemalan lawyer, and Executive Director of the Institute for Comparative Studies in Criminal Sciences of Guatemala, who will provide an expert opinion on the amendments made to the definition of crimes of unlawful association in Honduras and Central America, as a civil safety policy designed to combat gangs or *maras*.

C) Expert witness offered by the representatives

Roy Murillo, Judge of Execution of Sentence in Costa Rica, international consultant, expert in penitentiary centers, who will provide an expert opinion on the Honduran prison system and its alleged incompatibilities with international standards.

D) Reproduction of the testimony offered by the representatives

Abencio Reyes, Aida Rodríguez, Doris Esperanza Paz, Manuel Armando Fuentes, Marlene Ardón Santos, Marta Elena Suazo, Olga María Santos, Isis Perdomo, Rómulo Emiliani and Violeta María Discua, in keeping with the purpose indicated in the representatives' pleadings and motions brief (*supra* considering paragraph 12).

2. To require the representatives, the State, and the Commission to forward, if they consider it pertinent, as relevant and in accordance with considering paragraph 17, within the non-extendible time frame that expires on February 10, 2012, any

questions they deem pertinent to ask, through the Inter-American Court, the deponents mentioned in subparagraphs A), B) and C) of the first operative paragraph. All the testimony must be submitted by February 22, 2012, at the latest.

3. To require the parties to coordinate and to take the necessary measures so that, when the questions of the parties have been received, if applicable, the proposed deponents include the answers in their affidavits, in accordance with considering paragraph 17 of this Order.

4. To require that, when the testimony required in the first operative paragraph has been received, the Secretariat of the Court forward it to the other parties so that, if they consider it necessary, they may present their observations on the said testimony.

5. To convene the representatives, the State, and the Inter-American Commission to a public hearing, to be held during the Court's ninety-fourth regular session, which will take place at its seat in San José, Costa Rica, on February 28 and 29, 2012, starting at 3 p.m., to receive their final oral arguments and final oral observations, respectively, on the merits and eventual reparations, and to receive the testimony of the following persons:

A) Presumed victims proposed by the representatives

1) *María Oneyda Estrada Aguilar*, mother of José Dionisio Cerrato Estrada, who died in the fire, who will testify on: (i) the persecution that her son suffered from the police because he belonged to the "*mara*," even though he had a letter authorizing his liberty issued by a judicial authority, and (ii) the presumed consequences of the facts of the instant case for the family.

2) *Sandra Lorena Ramos Cárcamo*, former companion of Wilfredo Reyes, who died in the fire, who will testify on: (i) the consequences on her former companion of the Honduran penal reform; (ii) her present life without his financial support, and (iii) the situation suffered by her companion in relation to the facts of this case.

B) Expert witnesses

B.1 proposed by the representatives

Celso Alvarado, lawyer, expert in criminal law and criminal procedure, who will provide an expert opinion on: (i) the actions of those responsible for the investigation in the instant case; (ii) the measures taken, and (iii) the measures that, based on his experience, should have been taken.

B.2 proposed by the Commission

Mario Luis Coriolano, Argentine lawyer, Vice Chairperson of the United Nations Subcommittee for Prevention of Torture, who will provide an expert opinion on the international standards for prison systems, and structural defects in relation to safety.

6. To call upon the State to facilitate the exit from and entry into its territory of the deponents, if they reside or are there, who have been summoned in this Order to

testify at the public hearing on merits and eventual reparations in this case, in accordance with the provisions of Article 26(1) of the Court's Rules of Procedure.

7. To require the representative, the State and the Inter-American Commission to notify this Order to the persons they have proposed and who have been summoned to testify, in accordance with the provisions of Article 50(2) and 50(4) of the Rules of Procedure.

8. To inform the representatives, the State, and the Inter-American Commission that it must cover the costs arising from producing or contributing the evidence they propose, in accordance with the provisions of Article 60 of the Rules of Procedure.

9. To require the representative to inform the persons summoned by the Court to testify that, under the provisions of Article 54 of the Rules of Procedure, the Court will advise the State, for the purposes established in the relevant domestic laws, of any case in which those summoned to appear or to testify, do not appear or refuse to testify without legitimate cause or when, in the Court's opinion, they have violated their oath or solemn declaration.

10. To inform the representatives, the State, and the Inter-American Commission that, following the testimony provided at the public hearing, they may present to the Court their final oral arguments and final oral observations, respectively, on the merits and eventual reparations in the instant case.

11. To require the Secretariat of the Court, in accordance with the provisions of Article 55(3) of the Rules of Procedure, to forward to the representatives, the State, and the Inter-American Commission a copy of the recording of the public hearing on merits and eventual reparations, as soon as possible.

12. To inform the representatives, the State, and the Inter-American Commission that they have until March 30, 2012, to present their final written arguments and final written observations on the merits and eventual reparations. This time frame is non-extendible and independent of the forwarding of the recording of the public hearing.

13. To incorporate into the body of evidence of the instant case, the expert opinions provided by Carlos Tiffer Sotomayor and Reina Auxiliadora Rivera Joya in the case of *Servellón García et al. v. Honduras* (*supra* having seen paragraph 24).

14. To require the Secretariat of the Court to notify this Order to the representatives of the presumed victims, the State, and the Inter-American Commission.

Diego García-Sayán
President

Pablo Saavedra Alessandri

Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary