

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

**DECEMBER 20, 2012**

**CASE OF SUÁREZ PERALTA v. ECUADOR**

**HAVING SEEN:**

1. The brief of January 26, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application against the Republic of Ecuador (hereinafter "Ecuador" or "the State"). In said brief, the Commission offered an expert report and indicated its purpose, but did not name the person who would render it. It also requested the transfer, where pertinent, of two expert reports rendered in the case of Albán Cornejo et al. v. Ecuador.

2. The communication of February 8, 2012, in which the Commission provided the name of the expert witness offered in its brief submitting the case and submitted his curriculum vitae.

3. The brief of April 28, 2012, in which the representative of the alleged victims (hereinafter "the representative") presented his brief of pleadings, motions and evidence in this case (hereinafter the "brief of pleadings and motions"), and offered as testimonial evidence the statements of six persons and the expert opinions of three others. The representative also requested access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Assistance Fund of the Court" or "the Fund") to cover the expenses incurred by two alleged victims, four family members and two representatives during their participation in the public hearing to be held in this case, as well as those of the aforementioned deponents.

4. The brief of August 22, 2012, in which the State submitted its brief of preliminary objections and its answer to the briefs submitting the case and pleadings and motions (hereinafter "answer brief"), and offered three expert opinions.

5. The note of Secretariat of September 11, 2012, in which, following the instructions of the President of the Court, and pursuant to Article 42(4) of its Rules of Procedure, the Commission and the representative were granted a period of 30 days to

submit their written observations to the preliminary objections filed by the State in its answer brief.

6. The Order of the President of the Court of September 14, 2012 (hereinafter "Order of the President"), in which he declared admissible the victims' request to have access to the Victims' Legal Assistance Fund of the Court (hereinafter "Legal Assistance Fund") and granted financial assistance for the presentation of a maximum of four testimonies, to be rendered either by affidavit or at a public hearing.

7. The briefs of October 11 and 13, 2012, in which the Commission and the representative submitted, respectively, their observations to the preliminary objections filed by the State of Ecuador.

8. The notes of the Secretariat of October 19, 2012, in which, pursuant to Article 46(1) of the Rules of the Court, the State, the representative and the Inter-American Commission were asked to forward their respective definitive lists of deponents (hereinafter "definitive lists") and, for reasons of procedural economy, to indicate which deponents could render their statements by affidavit and which deponents should be summoned to testify at a public hearing.

9. The briefs of November 1 and 5, 2012, in which the State and the Commission, respectively, forwarded their definitive lists. The State pointed out that the three experts proposed in its answer brief should be summoned to render their statements at a hearing. Moreover, it substituted one of the expert witnesses proposed, without altering the object of the expert opinion. For its part, the Commission confirmed its offer of one expert witness. The representative did not submit his definitive list.

10. The notes of the Secretariat of November 9, 2012, in which, pursuant to Article 46 of the Rules of the Court and following the instructions of its President, the parties and the Commission were granted a period until November 20, 2012 to submit observations to the respective lists.

11. The brief of November 20, 2012, in which the Commission stated that it had no observations to make regarding the list of deponents offered by the representative. It also pointed out that the State did not justify the substitution of the expert witness requested.

**CONSIDERING THAT:**

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

2. The Court guaranteed the parties the right of defense in respect of the offers of evidence contained in their brief submitting the case and in the pleadings and motions and answer briefs, as well as in their definitive lists (*supra* Having Seen 10).

3. In this Order the President will address the following aspects: a) the expert opinion offered by the Inter-American Commission; b) the statements of witnesses and expert witnesses offered by the representative and the State ; c) the request by

the Commission to formulate questions to one of the expert witnesses offered by the representative; d) the manner in which the statements and expert reports shall be rendered; e) the application of the Victims' Legal Assistance Fund, and f) the final oral and written arguments and observations.

#### **A. Expert evidence offered by the Inter-American Commission**

##### *1. Expert statement*

4. Article 35(1) (f) of the Rules provides for the "possible appointment of expert witnesses" by the Inter-American Commission, with due justification of the grounds and object of such appointment, "when the Inter-American public order of human rights is affected in a significant manner." The implication of this provision is that the appointment of expert witnesses by the Commission is an exceptional circumstance, subject to that requirement, which is not satisfied by the mere fact that the evidence to be produced is related to an alleged human rights violation. The "Inter-American public order of human rights" must be "affected in a significant manner," and it is up to the Commission to justify that situation."<sup>1</sup>

5. In this case, the Commission offered the expert opinion of Laura Cecilia Pautassi, on "the content of the State's obligations to guarantee access to justice and its relationship with the right to health, as well as international standards regarding due diligence in such cases." In its definitive list, the Commission pointed out that the expert evidence offered will contribute to the analysis of standards of due diligence and efficacy for relevant domestic investigations and processes in cases of medical malpractice, in the context of the obligations to protect and promote human rights, in situations resulting in permanent after-effects and continuous deterioration of health. The expert opinion will also enable the Court to develop its case-law regarding the State's obligation to punish violations of fundamental rights and prevent situations of impunity, in relation to its responsibilities stemming from the activities of health professionals.

6. In its answer brief, the State argued that the Commission did not appoint the expert witness in its brief submitting the case, pursuant to Article 35(1)(f) of the Rules, nor did it provide sufficient justification on how the inter-American public order of human rights is significantly affected, which is an essential requirement of the Court's Rules of Procedure. In this regard, in its brief of observations to the preliminary objections filed by the State, the Commission explained that the object of the expert opinion was properly expressed in the note submitting the case to the Court and that the name of expert witness, Laura Pautassi, and her curriculum vitae were forwarded to the Court in a timely manner, together with the original documents of the case, and within the period established in Article 28(1) of the Rules of Procedure. Furthermore, it stated that the expert opinion offered complies with the regulatory requirement of being linked to aspects of inter-American public order, since it transcends the victims in the case.

7. The representative did not submit observations to the offer of the Commission.

8. According to Article 35(1)(f) of the Court's Rules of Procedure, the proper

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<sup>1</sup> 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 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 paragraph 24. *Case of Pedro Miguel Vera Vera et al. v. Ecuador*.

procedural stage for the Commission to present expert evidence is during the submission of the case, with an additional period of 21 days to forward the corresponding attachments, in accordance with Article 28 of the Rules. This requirement was observed by the Commission. However, the Commission's supporting arguments regarding the "inter-American public interest" in the instant case were only submitted together with its observations to the preliminary objections filed by the State and in its definitive list of deponents. The foregoing does not significantly affect the principle of equality between the parties or the State's right to defense, since the latter had an opportunity to submit any observations deemed pertinent regarding those arguments in its observations to the definitive lists of deponents. Moreover, it is also the proper procedural moment for submitting observations or objections to the deponents offered by any of the other parties in the case, according to Article 46(2) of the Rules of Procedure. Therefore, as has occurred in other cases<sup>2</sup>, the President admits the aforementioned arguments presented by the Inter-American Commission in its brief of observations to the preliminary objections and in its definitive list, subsequent to the submission of the case, and shall take these into consideration when assessing the admissibility of the respective expert opinion.

9. Furthermore, regarding the link between the object of the expert opinion of Laura Cecilia Pautassi and the inter-American public order, the President takes note of the Commission's observation that said expert report refers "to the obligations to protect and promote human rights, in situations resulting in permanent after-effects and continuous deterioration of health," which transcend the victims in this case. In this sense, this Presidency notes that the object of that expert opinion would facilitate an analysis of international standards on "access to justice and its relationship with the right to health [and] due diligence in [...] cases of this type." In view of the foregoing, the President considers that the analysis of the State's obligations in relation to due diligence, and the efficacy of investigations and the corresponding legal proceedings, specifically in cases that affect the right to health in a permanent way, may have an impact on situations that arise in other States Parties to the Convention. Thus, the object of this expert report is a matter that affects the inter-American public order and transcends this case and the specific interest of the parties in litigation.

10. Based on the foregoing considerations, the President considers it appropriate to admit the expert opinion of Laura Cecilia Pautassi, proposed by the Inter-American Commission, and recalls that the value of said opinion shall be assessed in due course, within the context of the body of evidence and according to the rules of sound judgment. The object and manner in which that expert opinion shall be rendered are specified in the operative section of this Order (*infra* operative paragraph 5).

*2. Request to transfer the expert opinions provided in the case Albán Cornejo et al. v. Ecuador*

11. In its brief submitting the case, the Commission requested that the expert opinions provided by Ernesto Albán Gómez and Raúl Moscoso Álvarez, in the case of Albán Cornejo et al. v. Ecuador (*supra* Having Seen 1), be included in the case file, where appropriate.

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<sup>2</sup> 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 10, and *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Inter-American Court of Human Rights of January 25, 2012, Considering paragraph 13.

12. In its answer brief, the State objected to the inclusion of those expert opinions, pointing out that the Rules of the Court allow the Commission the possibility of appointing expert witnesses, and that in this specific instance the request to transfer the expert opinions to this case should be interpreted as new documentary evidence. Furthermore, the transfer of “expert opinions used in other cases nullifies the exceptional nature of presenting expert witnesses and its compliance with the rules, given that such a legal action [by the Commission] cannot be considered as an expert opinion but rather as documentary evidence, something that is not permitted.”

13. In this regard, the Commission, in its written observations to the preliminary objections filed by the State, argued that “the request to transfer the expert opinions constitutes evidence of an expert and not a documentary nature, as the State has erroneously sought to characterize it.” Furthermore, it noted that the formulation of the expert opinions whose transfer was requested, is consistent with Rules and practice in effect at the time when they were rendered, and considered that both the expert opinion of Ernesto Albán Gómez, which concerns aspects of Ecuadorian legislation regarding the scope of criminal laws on matters of medical malpractice and the duties of judges, and the expert opinion of Raúl Moscoso Álvarez, concerning procedural aspects of trials for medical malpractice and compliance with guarantees of due process in Ecuadorian legislation and in forensic practice, are directly connected with the matters addressed in the case and the issues of public order mentioned previously, and will provide the Court with important elements for analysis of this case.

14. As to the reception and assessment of the evidence, the Court has previously stated that the proceedings followed before it are not subject to the same formalities as domestic judicial actions, and that the inclusion of certain elements in the body of evidence means that special attention must be paid to the circumstances of the specific case, taking into account the limits imposed by respect for legal certainty and procedural balance between the parties.<sup>3</sup> Regarding the request of the Commission, the President notes that the expert opinion provided by Mr. Raúl Moscoso Álvarez in the case *Albán Cornejo et al. v. Ecuador* was rendered by affidavit, while the expert opinion of Mr. Ernesto Albán Gómez was rendered orally at the public hearing in that case. Therefore, having regard to the principle of procedural economy and celerity, the President deems it appropriate to include, where applicable, the written expert opinion rendered by Mr. Raúl Moscoso Álvarez in the body of evidence in this case, as well as the recording of the expert opinion rendered by Mr. Ernesto Albán Gómez at the public hearing, since these could be useful in resolving the instant case<sup>4</sup>. Therefore, for the purposes of this case, these expert opinions constitute documentary evidence and not expert evidence, as the Inter-American Commission has argued, and the parties may refer to them in their final arguments.

### ***B. Statements of witnesses and expert witnesses offered by the representative and the State***

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<sup>3</sup> Cf. *Case of Carpio Nicolle et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C. 117, para. 55; *Case Tiu Tojin v. Guatemala*. Order of the President of the Inter-American Court of Human Rights of March 14, 2008, Considering paragraph 9, and *Case of Pacheco Teruel et al. v. Honduras*. Order of the President of the Inter-American Court of Human Rights of January 27, 2012, Considering paragraph 26.

<sup>4</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru*. Order of the President of the Inter-American Court of Human Rights of March 18, 2005, Considering paragraphs 7 to 10, and *Case of Pacheco Teruel et al. v. Honduras*, *supra*, Considering paragraph 26.

### *1. Statements offered by the representative*

15. As to the statements and expert opinions offered by the representative and the State, which have not been objected to, the President considers it appropriate to obtain these so that the Court may assess their evidentiary value at the proper procedural moment, in the context of the existing body of evidence and according to the rules of sound judgment.

16. The representative offered three expert opinions: a) Iván Castro Patiño, former Dean of the Faculty of Law of the Catholic University of Santiago de Guayaquil, on “guarantees of due process and the State’s procedural initiative in the investigation of a crime and the consequences for the State of impunity in a case”; b) Ignacio Hanna Musse, doctor of the Clínica Alchivar and Mrs. Suárez’ personal physician, on “the treatment followed [by Mrs. Suárez Peralta in] recent years and the treatment to be followed in future [...]”, and c) Hugo Morán Sánchez, an accounting expert, on “the calculation of costs for pecuniary damages incurred by the [alleged] victim”. The representative also offered six witness statements: a) Luis Aranza Aranza, on “the financial hardship suffered by the alleged victim during the medical treatment”; b) Stalin Xavier Intriago Burgos, on the “financial situation of the Cerezo Suárez family during the course of Mrs. Suárez Peralta’s illness; c) Luis Humberto Córdova Ramos, on “the way in which the Traffic Commission of Ecuador offered operations through Cuban doctors in the year 2000”; d) Dennis Cerezo Cervantes, on “the health problems experienced by his wife since she underwent the surgical procedure that resulted in medical malpractice”; e) Rodolfo Sánchez Jiménez, on “Mrs. Suárez Peralta’s current situation and the after-effects of the medical malpractice that occurred in the past could have on her in the future”, and f) Eduardo Tigua Castro, on “the psychological condition of Mrs. Suárez Peralta, as well as the damage caused to her family.”

17. Furthermore, regarding the testimonies of Messrs. Luis Aranza Aranza and Stalin Xavier Intriago Burgos, the representative attached a copy of their statements rendered by affidavit on April 5, 2012, and whose testimonial objects are substantially consistent with the offers made before the Court. Consequently, given that these constitute documentary evidence, which will be assessed in due course in the context of the existing body of evidence, the President considers it unnecessary to repeat them.

18. In this regard, the State made no objection to those offers, but noted that the testimony of Mr. Dennis Cerezo Cervantes could be rendered by affidavit.

19. The representative also requested support from the Victims’ Legal Assistance Fund to cover the costs of travel, hotel and per diems of the victims, expert witnesses, witnesses and representatives during the public hearing before the Court.<sup>5</sup>

20. In this regard, in his Order of September 14, 2012, the President placed on the record that there were inconsistencies regarding the role and number of people who

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<sup>5</sup> Namely: the alleged victims Melba Del Carmen Suarez Peralta and Melba Gardenia Peralta Mendoza; their family members, Miguel Marcelo Suarez Robinson, Dennis Edgar Cerezo Cervantes, Gandy Alberto Cerezo Suarez, Katherine Madeline Cerezo Suarez and Marilyn Melba Cerezo Suarez; the expert witnesses Iván Castro Patiño, Ignacio Hanna Musse, Hugo Miguel Morán and Rodolfo Sánchez Jiménez; the witnesses Eduardo Tigua Castro, Luis Alberto Azanza Azanza, Luis Humberto Córdova Ramos and Stalin Xavier Intriago Burgos and the legal representative of the alleged victims, Mr. Jorge Sosa Meza and his assistant José Peralta Rendón.

would require support from the Assistance Fund in order to participate in the public hearing, and in relation to the witness and expert testimonies indicated in the offer of evidence, a matter that should be clarified in the final list of deponents.<sup>6</sup> Despite the foregoing, the President notes that the representative did not forward his definitive list of deponents, and therefore the list submitted in the brief of pleadings and motions shall be considered as the final list, and only with respect to those persons correctly indicated, pursuant to Article 40(2)(c) of the Rules - in other words, the deponents named together with the object of their statement and, where applicable, the expert witnesses, including their curriculum vitae and contact details.

21. Consequently, the President orders that statements be received from Dennis Cerezo Cervantes, Eduardo Tigua Castro, Rodolfo Sáñez Jiménez, Luis Humberto Córdova Ramos, as well as the expert opinions of Iván Castro Patiño, Hugo Miguel Morán Sánchez and Ignacio Hanna Musse. The object of these statements and the manner in which they are to be rendered shall be specified in the operative part of this Order (*infra* Operative paragraphs 1 and 5).

### *2. Alleged victim summoned officially by the President*

22. The President notes that the representative has not offered the alleged victim Melba Suárez Peralta as a deponent in this case, even though she was included in the request for support from the Legal Assistance Fund (*supra* Considering paragraph 19) so that she could participate in the public hearing. Notwithstanding this fact, the President considers that the testimony of the alleged victim Melba Suárez Peralta is useful for the purposes of describing to the Court the alleged violations of her human rights and their consequences for her health. Also, the alleged victim may explain to the Court the possible measures of reparation that it should adopt in relation to her specific situation.

23. Given the importance of this statement in an examination of the possible merits and reparations in this case, and based on the powers granted under Article 58(a) of the Rules of the Court, the President decides that the Court shall receive the statement of the alleged victim Melba Suárez Peralta. Its object and the manner in which it will be rendered is specified in this Order (*infra* Operative paragraph 1).

### *3. Expert opinions offered by the State*

24. In its answer brief, the State offered three groups of expert opinions: a) Verónica Valencia and Iván Ríofrío, on psychiatric intervention models in pre-operative, peri-operative and post-operative processes; b) Margarita Mencía and Jaysoon Abarca, on diagnostic, emergency and surgical procedures in gastroenterology in Ecuador, and c) Manuel Jácome, Nelly Valladares and Luis Alfonso Pazmiño, on legal accounting for the assessment of pecuniary reparations.

25. In its definitive list of deponents, the State indicated that the expert opinion on psychiatric intervention models in pre-operative, peri-operative and post-operative processes would be rendered only by Mrs. Verónica Valencia, Head of the Psychiatric Service at the Eugenio Espejo Hospital and that the expert opinion on diagnostic, emergency and surgical procedures in gastroenterology in Ecuador would be rendered only by Mr. Jaysoon Abarca, Head of the Gastroenterology Service of the Eugenio Espejo Hospital. It further indicated that the expert witness Luis Alfonso Pazmiño

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<sup>6</sup> Order of the President of the Court of September 14, 2012, *supra*, Considering paragraph 7.

would be replaced by Mr. Carlos Delgado Bolaños, an academic and consultant, but did not explain the reason for this change.

26. In this regard, the Commission argued that the substitution of the deponents offered is admissible only “exceptionally” and “with a well founded request”, and noted that the State did not provide information explaining the reasons that would justify the admissibility of this request.

27. The President takes cognizance of the expert witnesses confirmed in the definitive list of the State and considers it admissible to receive the expert opinions of Verónica Valencia and Jaysoon Abarca. The Court shall assess the value of the expert opinions proposed by the State in due course, within the framework of the existing body of evidence and according to the rules of sound judgment. Their object and the manner in which they will be rendered shall be determined in the operative part of this Order (*infra* Operative paragraph 1).

28. As to the request to substitute an expert witness, the President recalls that the proper procedural stage for submitting expert evidence by the State is the answer brief. Also, the President advises that the request to submit definitive lists of deponents does not represent a new procedural opportunity to offer evidence<sup>7</sup>, except in the cases established in Article 57(2) of the Rules, namely: *force majeure*, serious impediment or supervening events.<sup>8</sup> The main purpose of the definitive lists is to allow the Commission, the alleged victims or their representatives and the State to confirm or withdraw the statements offered, and also, having regard to the principle of procedural economy, to indicate which of the deponents proposed they consider should render their statement at a public hearing and which deponents may do so by affidavit, for the purpose of programming the public hearing in the most effective manner possible. In this case, the State offered no justification for its request for substitution, but merely indicated the name of the new expert witness and submitted his curriculum vitae. In this regard, it is pertinent to recall that the party that offers evidence must ensure that its submission complies with the regulatory requirements and that failure to submit evidence at the proper time and in the correct manner leads to it being declared inadmissible. Thus, taking into account the exceptional circumstances defined in the Rules of Procedure for the substitution of deponents and the lack of justification for such a request, the Court cannot admit the substitution proposed by Ecuador and, therefore, shall not admit the expert opinion on legal accounting for pecuniary reparations.

***C. Request by the Commission to formulate questions to one of the expert witnesses offered by the representative***

29. In its observations to the definitive list, the Commission requested “an opportunity to formulate verbal or written questions to the expert witness Iván Castro Patiño, offered by the representative, whose statement relates “both to the inter-American public order and the subject matter of the expert opinion offered by the Commission.” In this regard, it indicated that this request “is based on the importance

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<sup>7</sup> Cf. *Case of Anzualdo Castro v. Peru*. Order of the President of the Inter-American Court of Human Rights of February 26, 2009, Considering paragraph 14, and *Case of Barbani Duarte et al. v. Uruguay*. Order of the President of the Court of January 31, 2011, Considering paragraph 22.

<sup>8</sup> Cf. *Case of the “Massacre of La Rochela” v. Colombia*. Order of the President of the Court of September 22, 2006, Considering paragraphs 20-24, and *Case of Barbani Duarte et al. v. Uruguay*, *supra*, Considering paragraph 22.



of allowing expert testimonies that are related to each other, in order to provide a variety of viewpoints– different or complementary – on the issues that they seek to address.” Moreover, it pointed out that both expert opinions refer to matters of inter-American public order such as analysis of the guarantees of accessibility, due diligence, due process and effectiveness of judicial mechanisms.

30. Regarding this request, the President recalls that the current Rules of Procedure establish limits regarding the reception of statements proposed by the Commission, and also in relation to its authority to question the deponents offered by the other parties.

31. In this regard, the President recalls that, pursuant to Article 52(3) of the Rules, the Inter-American Commission may question an expert witness proposed by another party at the public hearing when the inter-American public order of human rights is substantially affected and the statement concerns matters contained in an expert report offered by the Commission. However, although the report of expert witness Castro Patiño concerns access to justice, a subject connected with the expert opinion of expert witness Pautassi, the object of the first expert opinion refers specifically to guarantees of due process and the State’s procedural initiative in the investigation of a crime and the consequences for the State of impunity in the case, for which reason it is not linked to matters of inter-American public order. Therefore, it is not appropriate to admit the request of the Inter-American Commission.

#### ***D. Manner in which the statements and expert opinions shall be rendered***

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

##### *1. Statements to be rendered before a notary public (by affidavit)*

33. Bearing in mind the provisions of Article 50(1) of the Rules, the indications of the parties in their definitive lists of deponents, the object of the statements offered and their connection with the facts of the case, as well as the principle of procedural economy, the President deems it appropriate to receive, through affidavits rendered before a notary public, the following statements and expert opinions: Melba Suárez Peralta, alleged victim, officially summoned by the President; Eduardo Tigua Castro, Rodolfo Sáñez Jiménez and Luis Humberto Córdova Ramos, witnesses proposed by the representative; and the expert opinions of Iván Castro Patiño, Hugo Miguel Morán Sanchez and Ignacio Hanna Musse, proposed by the representative; and of Verónica Valencia and Jaysoon Abarca, proposed by the State.

34. The President emphasizes that Article 50(5) of the Rules of the Court,

applicable to this case, makes provision for alleged victims or their representatives and the respondent State to submit a list of questions that they wish to be answered by those summoned to render statements before a notary public. In application of this provision, the President proceeds to grant an opportunity for the parties to submit, if they so wish, any questions they consider pertinent to the deponents and expert witnesses mentioned in the preceding paragraph. In rendering their statements by affidavit, the deponents shall answer those questions, unless the President decides otherwise. The corresponding terms shall be specified *infra*, in Operative paragraph 2 of this Order. The aforementioned statements and expert opinions shall be transmitted to the Commission and the parties, as applicable. In turn, the Commission and the parties may submit any observations deemed pertinent within the period indicated in this Order (*infra* Operative paragraph 4). The Court shall assess the evidentiary value of these statements in due course, taking into account the points of view, if any, expressed by the parties.

*2. Statements and expert reports to be received at a public hearing*

35. Given that the Court records in the instant case are ready for the opening of the oral proceedings on the preliminary objections and possible merits, reparations and costs, the President of the Court deems it appropriate to convene a public hearing to receive the statements of Dennis Cerezo Cervantes, the witness proposed by the representative, and of Laura Pautassi, the expert witness proposed by the Commission.

***E. Application of the Victims' Legal Assistance Fund***

36. In his Order of September 14, 2012 (*supra* Having Seen 6) the President admitted the request presented by the alleged victims, through their representative, to have access to the Assistance Fund of the Court, and granted the financial assistance necessary for the presentation of a maximum of four statements, either by affidavit or at the public hearing.

37. Having determined that the statements offered by the representative shall be received by the Court and the means by which these shall be rendered, it is now appropriate to specify the amount, recipients and purpose of said assistance.

38. Accordingly, the President decides that financial assistance shall be assigned to cover the travel and accommodation expenses necessary to enable the witness Dennis Cerezo Cervantes to appear before the Court and render his testimony during the public hearing to be held in the city of San Jose, Costa Rica, and to cover the costs of rendering and sending the affidavit of Mrs. Melba Suárez Peralta, and of two other deponents to be chosen by the representative.

39. As to the person who will appear at the public hearing, the Court shall make the pertinent and necessary arrangements to cover the travel, hotel and per diem costs of said deponent with resources from the Legal Assistance Fund.

40. As required by Article 4 of the Rules for the Operation of the Assistance Fund of the Court (hereinafter the "Rules of the Assistance Fund"), the Secretariat of the Court shall open a file on the costs of the case, in order to keep accounts and record all expenditures made with resources from the Fund.

41. Finally, the President recalls that, pursuant to Article 5 of the Rules of the

Assistance Fund, the respondent State shall be informed in due course of the expenditures made from the Assistance Fund so that it may submit any observations, if it so wishes, within the period established for that purpose.

***F. Final oral and written arguments and observations***

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

43. According to Article 56 of the Rules, alleged victims or their representatives, the State and the Commission may submit their final written arguments and final written observations, respectively, regarding the preliminary objections, merits reparations and costs, within the period specified in Operative paragraph 12 of this Order.

**THEREFORE:**

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

Pursuant to Articles 24(1) and 25(2) of the Statute of the Court and Articles 4, 15(1), 26, 31(2), 35(1), 40(2), 41(1), 45, 46, 50 to 58 and 60 of the Court's Rules of Procedure, and in the exercise of its authority in relation to the Victims' Legal Assistance Fund of the Court,

**DECIDES:**

1. To require, for the reasons stated in this Order (Considering paragraphs 32 to 34), in accordance with the principle of procedural economy and in exercise of the authority granted under Article 50(1) of the Rules of the Court, the following individuals to render their statements by affidavit:

***A) Alleged victim officially summoned by the President***

1. Melba Suárez Peralta, who will testify on alleged violations of her human rights, their alleged consequences on her state of health and any possible measures of reparation considered necessary in her case.

***B) Witnesses proposed by the representative***

1. Eduardo Tigua Castro, a medical psychologist, who will testify on the psychological suffering of Mrs. Suárez Peralta and on the damage caused to her family;
2. Rodolfo Sánchez Jiménez, a university lecturer at the Faculty of Psychological Sciences, who will testify on Mrs. Suárez Peralta's current situation and on the after-effects that the medical malpractice that occurred in the past could have on her in the future, and

3. Luis Humberto Córdova Ramos, a lieutenant of the Traffic Commission of Ecuador, who will testify on the alleged fact that the Traffic Commission offered operations through Cuban doctors in the year 2000.

**C) Expert witnesses proposed by the representative**

1. Ignacio Hanna Musse, university professor and personal physician of Mrs. Suárez, who will refer to the treatment followed by the victim in recent years and the treatment she should follow in future;
2. Iván Castro Patiño, former Dean of the Faculty of Law of the Catholic University of Santiago de Guayaquil, who will testify on the guarantees of due process, the procedural initiative of the State in the investigation of a crime and the consequences for the State of impunity in a case, and
3. Hugo Miguel Morán Sánchez, an accounting expert, who will testify on the calculation of the expenses for pecuniary damages incurred by the victim until now.

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

1. Verónica Valencia, Head of Psychiatric Services at the Eugenio Espejo Hospital, who will testify on psychiatric intervention models in pre-operative, peri-operative and post-operative procedures, and
  2. Jaysoon Abarca, Head of the Gastroenterology Service of the Eugenio Espejo Hospital, who will refer to diagnostic, emergency and surgical procedures in gastroenterology in Ecuador.
2. To require the representative and the State to submit, if considered pertinent and within the non-renewable term that expires on January 11, 2013, any questions considered appropriate through the Inter-American Court to the alleged victim, the witnesses and expert witnesses mentioned in operative paragraph 1 of this Order. The statements and expert opinions required in Operative paragraph 1 must be submitted no later than February 1, 2013.
3. To require the representative, the State, the Commission and the Secretariat of the Court to coordinate and make the necessary arrangements so that once the respective questions of the parties have been received, the deponents and expert witnesses may include the respective answers in their statements rendered by affidavit, under the terms of Considering paragraphs 32 and 33 of this Order.
4. To require the Secretariat of the Court, once the statements and expert opinions required in Operative paragraph 1 have been received, to transmit them to the parties and to the Commission, together with the expert opinions included in this case (*supra* Considering paragraph 14), so that they can submit their observations to those statements and expert opinions, respectively, with their final arguments, at the latest.
5. To summon the representative, the State and the Inter-American Commission to a public hearing to be held on February 11, 2013 from 9:00 hours to 13:00 hours, during the Court's 98th Regular Period of Sessions in the city of San Jose, Costa Rica, in order to receive their final oral arguments and final oral observations, respectively,

on the preliminary objections and possible merits, reparations and costs, as well as to receive the statements and expert opinions of the following persons:

***A) Witness proposed by the representative***

1. Dennis Cerezo Cervantes, husband of the alleged victim, who will testify on the ailments suffered by Mrs. Suárez Peralta since she underwent the surgical procedure that resulted in medical malpractice and its consequences.

***B) Expert witness proposed by the Commission***

1. Laura Cecilia Pautassi, Doctor of Law, full-time researcher at the Institute of Legal and Social Investigations, who shall render an expert opinion on the content of the State's obligations to guarantee access to justice and its relationship with the right to health, as well as international standards on due diligence in such cases.
6. To require the Republic of Ecuador to facilitate the exit and entry into its territory of the deponents and expert witnesses who reside or are present therein, who have been summoned in this Order to render their testimonies and expert reports at the public hearing on the preliminary objections and possible merits, reparations and costs in this case, under the terms of Article 26(1) of the Rules of the Court.
7. To require the Inter-American Commission, the representative and the State to serve notice of this Order to the persons they have proposed and who have been summoned to render a statement and/or expert opinion, under the terms of Article 50(2) and 50(4) of the Rules.
8. To inform the Inter-American Commission, the representative and the State that they must cover the costs incurred in providing or rendering the evidence proposed by them, pursuant to Article 60 of the Rules, without prejudice to the provisions of Considering paragraphs 22 and 23 of this Order.
9. To require the representative to inform the persons summoned to testify by the Court and to render expert opinions that, pursuant to Article 54 of the Rules, the Court shall bring to the State's attention the cases in which the persons summoned to appear or testify before this Court fail to do so, or refuse to testify without legitimate cause or who, in the opinion of the Court, have violated their oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.
10. To inform the representative, the State and the Inter-American Commission that, once the abovementioned statement and expert opinion have been rendered at the public hearing, they may present before the Court their final oral arguments and final oral observations, respectively, on the preliminary objections and possible merits, reparations and costs in this case.
11. To order the Secretariat of the Court, pursuant to Article 55(3) of the Rules, to provide the Inter-American Commission, the representative and the State with a copy of the recording of the public hearing, as soon as possible after the hearing has concluded.

12. To inform the Inter-American Commission, the representative and the State that the time limit established for submitting their final written arguments and final written observations, respectively, regarding the preliminary objections and possible merits, reparations and costs in this case, expires on March 11, 2013. This term is non-renewable.

13. To order the Secretariat of the Court, pursuant to Article 4 of the Rules for the Operation of the Assistance Fund of the Court, to open a file on the costs, recording each of the expenditures made from that Fund.

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

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary