

**ORDER OF THE PRESIDENT OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JANUARY 22, 2014**

VICTIM'S LEGAL ASSISTANCE FUND

CASE OF TARAZONA ARRIETA *ET AL.* v. PERU

HAVING SEEN:

1. The brief of June 3, 2013, and its attachments, wherein the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") filed the *case of Tarazona Arrieta et al.* before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal"), in regard to the State of Peru (hereinafter "the State" or "Peru").
2. The brief of October 6, 2013, and its attachments received on the 16th of that month, wherein the representatives of the alleged victims (hereinafter "the representatives") filed their brief containing pleadings, motions, and evidence (hereinafter "the brief of pleadings and motions"), provided three testimonial declarations, two expert opinions, and requested that the Victim's Legal Assistance Fund be applied in order to "cover the specific costs related to the production of evidence during the proceeding in this case before the Court."
3. The note of the Secretariat of the Court of November 1, 2013, wherein it was stated that the aforementioned request was accompanied by "sworn statements of the alleged victims and the brief included a table of estimated costs in regard to the presentation of three witnesses and two expert witnesses at the hearing," which "pursuant to Article 3 of the Rules of Procedure of the Court in regard to the use of the Fund, the request will be assessed and considered by the President of the Court for appropriate action to be taken." Moreover, a period of two months was granted for the State to file its answer to the brief submitting the case of the Commission and the brief containing pleadings, motions, and evidence of the representatives.
4. The brief of January 3, 2014, and its attachments, wherein the State of Peru (hereinafter "the State") filed the aforementioned answer (*supra* Having Seen 3) wherein it "object[ed]" to the request of the representatives to use the Victim's Legal Assistance Fund.

CONSIDERING THAT:

1. Peru has been a State Party to the American Convention (hereinafter "the American Convention" or "the Convention") since July 28, 1978, and acknowledged the contentious jurisdiction of the Court on January 21, 1981.

2. In 2008, the General Assembly of the Organization of American States (hereinafter the "OAS") created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter "the Inter-American System's Assistance Fund) and commissioned the OAS Permanent Council to draft the rules of procedure for the Fund,¹ adopted in November 2009.² This Assistance Fund was created "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."³ According to the said Rules of Procedure adopted by the Permanent Council, the Inter-American System's Assistance Fund has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court. As regards the financing of the Inter-American System's Assistance Fund, currently this depends on "voluntary capital contributions from the Members States of the OAS, the Permanent Observer States, and other States and donors that may wish to collaborate with the Fund."⁴ In addition, according to article 4 of the Rules of Procedure approved by the Permanent Council, it corresponded to the Court to establish the formal requirements for eligibility to request assistance, and also the approval procedure.

3. Consequently, on February 4, 2010, the Court adopted the Rules of Procedure of the Assistance Fund, which came into force on June 1, 2010, in order to "regulate the operation of, and access to the Fund [...] for the litigation of cases before it."⁵ As established in these Rules of Procedure, in order to use this Fund, a presumed victim must fulfill three requirements: 1) request this in the brief with pleadings, motions and evidence; 2) prove, by means of a sworn affidavit and other appropriate evidence that satisfies the Court, that they lack sufficient financial resources to cover the costs of litigation before the Inter-American Court, and 3) indicate precisely the aspects of their participation in the proceedings that require the use of the resources of the Assistance Fund.

4. As stipulated in Article 3 of the Rules of Procedure of the Court's Assistance Fund, on receiving a request to use these resources, the Secretariat of the Court must conduct a preliminary review of the request for assistance and require the requesting party to present any additional background information required for the request to be submitted to the consideration of the President of the Court, who will assess the petition and take the pertinent decision within three months of receiving all the required information.

5. The representatives requested the Fund "to cover specific costs related to the production of evidence in the proceeding of this case before the Court," specifically those expenses related to flight, accommodations, and food for victims, witnesses, and expert witnesses accepted by the Court, as well as expenses in regard to the "formalization of *affidavits* to notarize the testimony and expert opinions in Peru. On the other hand, they noted that "there are a series of expenses that the representatives can cover at this stage of the

¹ AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during its XXXVIII Period of Regular Sessions of the OAS, in the fourth plenary session, held on June 3, 2008, "*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*," operative paragraph 2(b).

² CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*."

³ AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, operative paragraph 2(a), and Resolution CP/RES. 963 (1728/09), *supra* note 2, Article 1(1).

⁴ Rules of procedure of the Inter-American System's Assistance Fund, *supra* note 3, article 2(1).

⁵ Rules of procedure of the Inter-American Court of Human Rights on the Operation of the Victims' Legal Assistance Fund approved by the Court on February 4, 2010, Article 1.

proceeding before the Court, and that the victim's did not include in the request for the Fund,"⁶ but they requested reimbursement for the representatives at the end of the proceeding.

6. The State argued that the Court "should not accept" the request of the representatives to use the Victim's Legal Assistance Fund because, according to the State, the representatives "did not provide any evidence" to establish cause for the request, the representatives of the alleged victims "are sponsored by the Pro Human Rights Association [Asociación Pro Derechos Humanos – APRODEH for its acronym in Spanish], an association that obtains funds from international cooperation" and that "a disproportionate use of the Victim's Legal Assistance Fund would denaturalize its purpose." Also, the State noted that it was not clear "from the declarations of [one of the alleged victims and four family members of two of the other victims] that their statements were rendered before a notary public or other official with the power to attest the authenticity of the statements."

7. First, the Acting President holds that the request for the Assistance Fund of the Court was made in a timely manner in the brief of pleadings and motions, in the name of the Pro Human Rights Association (APRODEH) as representatives of the next-of-kin of Zulema Tarazona Arrieta, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura. The President understands that this request was carried out in the name of the alleged victims, exclusively, and takes note of the lack of economic resources, and as evidence of this, considers the sworn statements to be sufficient.⁷ They were filed pursuant to Article 2 of the Rules of Procedure of the Assistance Fund of the Court. In this regard, the President notes that it is the victims who should obtain the benefit provided by the Assistance Fund, and thus the lack of economic resources must be demonstrated in regard to them and not their representatives. Therefore, the President considers the State's argument inadmissible. (*supra* Considering clause 5).

8. On the other hand, the President recalls that the Assistance Fund of the Court is made up of voluntary donations from cooperating sources, to which these limited resources are insufficient to cover all expenses related to appearance and possible presentation of evidence before the Court by the alleged victims. Given the aforementioned, this Presidency will assess each specific case the request for assistance presented with regard to available funds, taking into account the need for assistance that could arise in other cases before the Court, so as to safeguard the proper administration and fair distribution of these limited resources.

9. The President takes note that, at the current stage of the proceedings, it is not possible to determine which of the testimonies offered by the representatives will be received by the Court, or in what form they will be received. Under Article 50(1) of the Court's Rules of Procedure, this determination corresponds to the Court or to its President, once the parties have forwarded their final lists of the declarants they propose and the right to defense has been ensured, in the terms of Articles 45 to 49 of the Court's Rules of Procedure.

10. Based on the foregoing considerations, the President finds admissible the presumed victims' request to use the Court's Legal Assistance Fund, in the understanding that it will be to cover expenditure relating to the appearance of declarants in a possible public hearing before the Court, as well as the presentation of testimony to the Court. In this regard, based on the resources currently available in the Assistance Fund, the presumed victims will be awarded the necessary financial assistance for the presentation of a maximum of two declarations and one expert opinion, either by affidavit or at the public hearing. In addition, the Acting President finds it appropriate to postpone determination of the specific amount, purpose and object of the financial assistance that will be provided to the presumed victims until such time as this

⁶ These expenses are: "Airplane flight, accommodations *per diem* of the APRODEH attorneys where the public hearing will be held; logistic expenses during the preparation and time of the hearing (photo copies, telephone calls, work materials and other necessary costs)".

⁷ Presented by Victor Tarazona Hinostrero, Lucila Arrieta Villena de Tarazona, Santiago Pérez Vera, Luis Alberto Bejarano and Nieves Emigdia Chavez Rojas. (Annex 31 ESAP)

Presidency, or the Court, rules on the admissibility and relevance of the statements of the presumed victims and of the testimonial and expert evidence offered and, as appropriate, on the opening of the oral proceedings, in accordance with Article 50(1) of the Court's Rules of Procedure, in order to be certain which declarations will be received by the Court, and also the way in which they will be presented.

11. Lastly, the Acting President recalls that, pursuant to Article 5 of the Rules of Procedure of the Fund, the State will be informed in a timely manner of the expenditures made from the Victim's Legal Assistance Fund so that the State may submit observations thereto by the established deadline.

THEREFORE:

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

in exercise of his authority in relation to the Victims' Legal Assistance Fund of the Court and in accordance with Article 31 of the Court's Rules of Procedure and Article 3 of the Rules of Procedure of the Court's Legal Assistance Fund,

DECIDES TO:

1. Declare admissible the request submitted by the presumed victims, through their representatives, to use the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, so that the necessary financial assistance will be granted for the presentation of a maximum of two declarations and one expert opinion, be it in a hearing or by way of *affidavit*, and that the specific amount, purpose and object of this assistance will be defined when deciding on the presentation of testimonial and expert evidence, and on the opening of the oral proceedings, in accordance with Article 50 of the Court's Rules of Procedure, as established in Considering paragraph 10 of this Order.

2. Require the Secretariat of the Court to notify this order to the representatives of the presumed victims, the State of Peru, and the Inter-American Commission on Human Rights.

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary